

1 REPORTER'S RECORD
2 TRIAL COURT CAUSE NO. 04-CR-3453-C
3 APPELLATE COURT CAUSE NO. AP-76,000 76100
4 VOLUME 10 OF 25 VOLUMES

4 THE STATE OF TEXAS) IN THE DISTRICT COURT
5)
6 VS.) 94TH JUDICIAL DISTRICT
7 JOHN HENRY RAMIREZ) NUECES COUNTY, TEXAS

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INDIVIDUAL VOIR DIRE

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On the 12th day of November, 2008, the
following proceedings came on to be heard in the
above-entitled and numbered cause before the HONORABLE
BOBBY GALVAN, Judge Presiding, held in Corpus Christi,
Nueces County, Texas:

Proceedings reported by Stenograph
Machine.

FILED IN
COURT OF CRIMINAL APPEALS

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Louise Pearson, Clerk

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P R O C E E D I N G S

1
2 NOVEMBER 12, 2008
3 MR. SKURKA: Judge, I would just point
4 out, Juror No. 25 is coming in at 10:00, but I believe
5 that was one of the ones -- there was -- was an
6 agreement. I had him on my list of agreements.
7 THE COURT: Do we agree?
8 MR. GARZA: That is true, Your Honor.
9 And I don't know why he stayed on.
10 THE COURT: Well, I guess...
11 MR. SKURKA: It's probably that court
12 manager you have.
13 THE COURT: That will help us catch up a
14 little bit.
15 MR. SKURKA: He's the one that was
16 hearing voices, Judge.
17 THE COURT: There's one. Okay. Well,
18 who do we have? Do we have Juror No. 123?
19 THE BAILIFF: Yes, both of them are here.
20 THE COURT: You want to do Juror No. 123,
21 I guess?
22 MR. GARZA: Yes, sir.
23 THE COURT: All right. Let's bring him
24 in, Jana Malm.
25 THE BAILIFF: Okay, Your Honor.

1 All right. Now, in that case, the burden
2 was on the State by clear and convincing evidence.
3 A. Yes.
4 Q. Okay? And it -- and for them to prevail --
5 and, I guess, they did.
6 A. Yes.
7 Q. The State, they had to -- State had to show
8 you by clear and convincing evidence their case,
9 okay --
10 A. Yes.
11 Q. -- essentially. This is -- this is a little
12 bit different, this is a criminal case. Now, in this
13 case, the State still has the burden, but it's even
14 higher than that. Clear and convincing is here,
15 reasonable doubt is here. This is beyond a reasonable
16 doubt. It's higher than that standard, all right?
17 And we don't really have a definition of what it is,
18 but it is the highest standard in the law, in all the
19 law, okay? Could you hold the State to that standard?
20 A. Yes, sir.
21 Q. All right. I mean, basically, it works like
22 this: Look, State's brought the charges against this
23 Defendant, all right, and the law says, "Look, State,
24 you bring the charges, that's fine, but you got to
25 prove them. He doesn't have to prove them. You bring

6

1 (Venireperson enters courtroom.)
2
3 VENIREPERSON NO. 21,
4 WENDELL PAUL LOVELY,
5 VOIR DIRE EXAMINATION
6 BY THE COURT:
7 Q. Okay. Come have a seat. Wendel Lovely,
8 Juror No. 21?
9 MR. SKURKA: This is 21, not 123.
10 THE COURT: Apparently. I guess 123 is
11 not here, yet.
12 MR. JONES: Oh, I was looking for a lady.
13 MR. SKURKA: It's nothing against you
14 Mr. Lovely, we're just starting to get our people
15 straight.
16 Q. (BY THE COURT) Mr. Lovely, we're going to
17 talk to you a little bit about. Obviously, you -- you
18 were with us the other day. And, okay, you have been
19 on a criminal jury before.
20 A. It was the State versus this lady that was
21 incarcerated, and we took her parental rights away
22 from her.
23 Q. Oh, okay, okay. Well, that's actually sort
24 of -- that's a family case, but -- but that helps me a
25 little bit.

8

1 them, you prove them." All right? And that's how our
2 system works, and you got no problem with that, I take
3 it?
4 A. No, sir.
5 Q. Okay. Now, as part of that, Defendant is
6 innocent until proven guilty. That's part of our
7 system, and it's -- it's part of -- it comes from
8 England, and before that from Rome, and before that
9 from Greece. And -- and the idea is, "Look, State,
10 you bring the charges, but until you prove them, if
11 you can prove them --" and maybe they can't -- until
12 you prove them, the person is innocent until you prove
13 them guilty. There's some places in the world where
14 you are -- State decides that you're guilty and they
15 charge you and you're guilty until you can prove your
16 innocence. We don't do that here. Until -- until you
17 prove it, everyone is innocent until proven guilty.
18 You agree with that law?
19 A. Yes.
20 Q. All right. And you could -- you could
21 presume this Defendant to be innocent until the State,
22 if they can prove it?
23 A. I must say I've seen some media coverage on
24 it.
25 Q. Okay. We're going to talk about that, too.

1 A. But, yes, I agree with that.

2 Q. You agree with that -- with that law?

3 A. Yes.

4 Q. Okay. Now, look, I can tell you that I've
5 done a lot of trials, both sitting over there, sitting
6 over there and sitting here, okay? And some of the
7 trials have gotten media coverage, and, quite frankly,
8 the media coverage has often been wrong, with all due
9 respect to the media, okay? Not always, but, you
10 know, a lot of times it was wrong, and sometimes it
11 was somewhat right, but off-base, okay?

12 In any event, we want to make sure that
13 when we begin this trial that both sides start off
14 equally, okay? You know, there was that O. J. Simpson
15 case, and there was -- there was nobody in the world,
16 in fact, Saturday Night Live did a skit -- I guess, it
17 was a rerun -- they did a skit the other day. They
18 were trying to get jurors who hadn't heard of the
19 case, you know? And one guy had a head injury and he
20 had completely forgotten and another guy, you know,
21 had amnesia.

22 We don't expect our jurors to live in a
23 vacuum, okay? And -- and, you know, this is one of
24 those cases where, locally, it's sort of that way, it
25 gets a lot of attention, okay, and most people have

1 here, no matter how you answer, okay? So, how -- how
2 do you feel about that?

3 A. I seen some media coverage a couple of three
4 years ago about these two ladies that were in the
5 police car, and they were, like, smirking and -- like
6 it was a big joke; and then about a week later, a
7 couple of weeks later, they were in front of the Judge
8 and they didn't think it was so funny, what had
9 happened. And I thought back then, I says, "Well,
10 they're guilty." They went to trial, they were found
11 guilty and they were convicted. That's what I know
12 about that.

13 As far as for Mr. Ramirez, I -- I recall
14 he had fled to wherever. And I made up my mind, I
15 thought, I says, "Well, if he fled, he's got something
16 to hide or he just doesn't want nothing to do with
17 this, whatever," and then I just forgot all about it.

18 Q. Okay.

19 A. And then -- I just forgot about it. And then
20 I was called down here a few weeks ago and I
21 remembered about it, and that was about it. I -- and
22 then, Monday, I was watching the 6:00 news and it
23 started coming on, and I turned it -- turned the T.V.
24 off, because it was -- it said something about jury
25 selection, so I got rid of that out of my mind.

10

1 heard of the case. But what we want are jurors that
2 can keep an open mind, all right? That is, if they've
3 already come up to a conclusion before we begin,
4 that's not fair. You agree with that?

5 A. Yes.

6 Q. Okay. And another one -- the other thing is
7 we want people that can follow the law. And we've
8 talked a little bit about the law and so far you've
9 told me you can follow the law, but you did tell me
10 that you'd seen some media coverage, okay? What we
11 need to know is, is that media coverage going to get
12 in the way of you sitting -- of you just saying, "You
13 know, what, media coverage, whatever, I'm just going
14 to sit and listen to the evidence that's presented.
15 I'm only going to consider the evidence that's
16 presented in trial and I'm not going to consider the
17 media coverage I've heard, because it may or may not
18 be right," okay, or, are you going to say, "Well, you
19 know what, I've already kind of formed an opinion
20 based upon that media coverage, and in all fairness
21 maybe I shouldn't sit in this case".

22 And I got to tell you, before you answer,
23 there's no right or wrong answer to that question. We
24 just need to know one way or the other. You're not
25 going to -- you're not going to hurt anybody's feeling

12

1 Q. Okay.

2 A. As far as making up my mind, I have not made
3 up my mind on anything that I haven't heard the
4 evidence in, but the ladies that -- that were with
5 this case were convicted. I believe they were guilty
6 and they were convicted of it and I made up my mind
7 then.

8 Q. About them?

9 A. Yes. And I don't know the circumstances of
10 Mr. Ramirez, but I would have to have a tendency that
11 the State has a pretty strong case against him or we
12 wouldn't all be here, but I would have to hear the
13 evidence to have them prove that he's guilty of this
14 crime.

15 Q. Okay. Okay. I mean, look, look, I -- I do
16 this myself, I'm watching T.V., and I hear a few
17 facts, and then I make, you know, my own mind -- and
18 my wife is a criminal defense lawyer and we talk about
19 that, too, "Oh, that guy's guilty or that guy's
20 guilty." But really and truly, the fact of the matter
21 is it's very different when you sit through a jury
22 trial. You've sat through a trial before.

23 A. Yes.

24 Q. It's very different. You don't hear, like,
25 you know a sound bite, okay, you don't see just a

1 little clip. I mean, you really hear the -- the case
 2 in depth. And -- and sometimes, you know, those
 3 little news clips that you get on the media just
 4 really -- really doesn't tell the case -- tell the
 5 facts of the case, how they really are, okay? I -- I
 6 guess I just need to know if because you heard that
 7 stuff -- and I know that you -- you stated to us that,
 8 you know, you would sit and listen to the evidence in
 9 this case. I just need to know if you're starting
 10 them off even a little bit behind.

11 A. Truthfully, yes.

12 Q. Okay.

13 MR. GARZA: Can we have a preliminary
 14 hearing?

15 THE COURT: Uh-huh. Let me --

16 MR. GARZA: Can we address the Court
 17 outside the presence --

18 THE COURT: Yeah.

19 MR. GARZA: -- of the juror?

20 THE COURT: Let me -- let me -- why don't
 21 you step in the jury room. I'm going to talk to these
 22 folks.

23 (Venireperson exits courtroom.)

24 MR. JONES: He's not qualified. He's
 25 prejudged the case. He's leaning towards the State.

14

1 THE COURT: I mean, I -- I asked him, and
 2 he -- he volunteered to me before I even talked about
 3 that issue that he'd seen stuff about the case, and it
 4 seemed to indicate to me he wanted to talk to me about
 5 it.

6 MR. JONES: Right.

7 THE COURT: And when I explored it, I
 8 mean, I asked him flat-out just now, "Are you starting
 9 them off behind," and he said, "Honestly, yes."

10 MR. JONES: That's a good -- that -- by
 11 the way, I like that question. That's a good way of
 12 putting it, for a layman, and he -- and he answered it
 13 pretty quickly.

14 THE COURT: All right. Mr. Skurka?

15 MR. SKURKA: That's okay, Judge.

16 THE COURT: All right.

17 MR. JONES: He was honest.

18 THE COURT: Yeah, he was honest. He was
 19 honest.

20 (Venireperson enters courtroom.)

21 THE COURT: All right. Mr. Lovely, I
 22 really appreciate your honesty, okay?

23 VENIREPERSON NO. 21: Yes, sir.

24 THE COURT: And -- and you're -- you're
 25 not going to be selected on this jury, and -- but I

1 really appreciate your honesty, okay?

2 VENIREPERSON NO. 21: Yes, sir.

3 THE COURT: Because that's exactly what
 4 we need. We don't want people sandbagging us and then
 5 they get back in there and just weren't fair with us.
 6 And there's no way we can know unless you tell us, and
 7 thank you very much, okay?

8 VENIREPERSON NO. 21: Yes, sir. Yep.

9 THE COURT: All right. Thank you, Mr.

10 Lovely.

11 VENIREPERSON NO. 21: Okay.

12 THE COURT: If you need a work excuse?

13 VENIREPERSON NO. 21: No, I'm -- I'm
 14 cool.

15 THE COURT: Okay. All right.

16 Before you bring --

17 (Venireperson exits courtroom.)

18 THE COURT: -- that next person, do we
 19 have that Juror No. 123?

20 THE BAILIFF: Roberto Castaneda?

21 MR. JONES: No, that's 20 -- he's 22.

22 THE COURT: Well, we can take -- there's
 23 nobody else there?

24 THE BAILIFF: That's it.

25 THE COURT: Okay. We'll go ahead.

16

1 (Venireperson enters courtroom.)

2

3 VENIREPERSON NO. 22,
 4 ROBERTO CASTANEDA,
 5 VOIR DIRE EXAMINATION

6 BY THE COURT:

7 Q. All right. You are Mr. Castaneda?

8 A. That is correct.

9 Q. All right. Mr. Castaneda, we're going to ask
 10 you some questions, okay?

11 A. Yes, sir.

12 Q. You came in the other day and filled out the
 13 questionnaire.

14 A. That is correct.

15 Q. And you listened to each one of our spiels,
 16 the other day.

17 A. Yes, sir.

18 Q. Okay. Now, you have been on a jury once
 19 before, and it was -- it looks like it was a contract
 20 situation.

21 A. Correct.

22 Q. A civil case.

23 A. Correct.

24 Q. Okay. All right. This is a little bit
 25 different, this is a criminal case. And we're looking

1 for two things, okay?
 2 A. Yes, sir.
 3 Q. We're looking for jurors that can keep an
 4 open mind, all right? We want -- we want people to
 5 come to court. If they've already made up their mind
 6 about the case, one way or another, that's not fair.
 7 A. Correct.
 8 Q. All right? We want people that can keep an
 9 open mind and come and listen to the evidence and --
 10 and really see what -- see what the case is all about,
 11 okay?
 12 A. Yes, sir.
 13 Q. And, two, we want people that can follow the
 14 law, all right?
 15 A. Correct.
 16 Q. Do you think that's you?
 17 A. Yes, sir.
 18 Q. Okay. Now, I'm going to talk about some
 19 things about the law. First of all, this is a
 20 criminal case, and in every criminal case the State,
 21 that is, the -- the State of Texas who's brought the
 22 charges has the burden of proof, okay? In this case
 23 that you sat on before, I -- I'm willing to bet you
 24 the burden of proof was preponderance of the evidence,
 25 okay, which is sort of a probably.

1 A. Correct.
 2 Q. Okay? But they've got to be proven. Two
 3 different things. Do you agree with that?
 4 A. Yes, sir, I do.
 5 Q. And what the law says is, "Hey, State, you
 6 bring the charges, that's fine, but until you can
 7 prove it beyond a reasonable doubt, the charges that
 8 you brought, we have to presume that the accused is
 9 innocent until you prove it, if you can prove it."
 10 A. Okay.
 11 Q. Okay? And that's not a -- that's not a --
 12 that's not a new invention, that's ancient.
 13 A. Uh-huh.
 14 Q. It's in the Bible, it's the Romans --
 15 A. Right.
 16 Q. -- and Greeks, the English, they all had it,
 17 okay? You agree with that law?
 18 A. That's correct. Yes, sir, I do.
 19 Q. So you could presume that the Defendant is
 20 innocent until and if the State could prove the case
 21 beyond a reasonable doubt to you.
 22 A. Right.
 23 Q. Okay. Now, the burden of proof is always on
 24 the State. It never shifts over here, okay? In other
 25 words, there's some countries in the world where a

18

1 A. Yes, sir.
 2 Q. One side has to -- has to prove the case.
 3 A. Correct.
 4 Q. But it's a pretty low standard, okay?
 5 A. Right.
 6 Q. Kind of like --
 7 A. Balancing.
 8 Q. -- tipping the scales.
 9 A. Yes, sir.
 10 Q. This is higher than that. This is beyond a
 11 reasonable doubt. And there's no definition, but it's
 12 the highest burden that we have in all of the law, all
 13 right? That being said, it's not beyond all doubt or
 14 beyond a shadow of a doubt. I mean, you know, it's
 15 beyond a reasonable doubt, okay?
 16 A. Yes, sir.
 17 Q. You think you could hold the State to that
 18 burden?
 19 A. Yes, sir.
 20 Q. No more or no less.
 21 A. That's correct.
 22 Q. Okay. Now, as part of that, the law says
 23 "State, you brought the charges, you got to prove
 24 them," all right, because charges are just accusations
 25 and accusations can be made.

20

1 Defendant is required to prove his innocence. We
 2 don't do that here. Here we say, "You know what,
 3 State, you accuse them, you prove it."
 4 And the burden never shifts over here.
 5 They don't have to do anything, that is, the Defense,
 6 okay? They -- they don't have to present any
 7 evidence. As part of that, the Defendant doesn't have
 8 to testify, okay? And it really makes sense, really,
 9 because, if the burden of proof is on them, then these
 10 folks don't have to do anything, all right. And
 11 that's the law. And it's not just the law, it's
 12 really -- it's under the U.S Constitution, all right?
 13 It's part of the Bill of Rights.
 14 But some people say, "Well, I can't
 15 follow that law, and even though I know that's the
 16 law, I can't follow it, and I -- not only would I want
 17 to hear what he had to say, but if I went back there
 18 and I wasn't sure about the State's case, you know,
 19 maybe -- maybe it's kind of very close to the line,
 20 and if this guy didn't testify, I'm going to put a
 21 little mark over here for the State and that may knock
 22 me over the top or I'm going to hold it against him
 23 that he doesn't testify."
 24 Now, I -- I will submit to you, I think
 25 there's a lot of reasons why somebody wouldn't

1 testify, all right? Maybe his lawyers think they
2 haven't proven the case and his lawyers advise him
3 "Don't testify, they haven't proven the case." Maybe
4 he's not an educated person, maybe -- maybe he
5 stutters when he gets nervous, maybe he sweats
6 profusely when he gets nervous, okay? Not all of us
7 are, you know, meant for the spotlight.

8 A. Correct.

9 Q. All right? So there's a lot of reasons why
10 somebody may not want to testify but the bottom line
11 is I need to know from you whether you would hold it
12 against him if he didn't testify. We don't know at
13 this point. Would you hold it against him?

14 A. No, sir, I wouldn't.

15 Q. Okay. Now, this case is capital murder and
16 -- which is sort of like murder plus, okay? It's not
17 just murder. And it sounds kind of strange to say,
18 "Plain murder," but there is such a thing as just
19 murder, okay?

20 A. Yes, sir.

21 Q. And murder, of course, is the intentional
22 taking of the life of another. All right?

23 A. True.

24 Q. The allegations that the State has made here
25 is more than that. They're saying, "capital murder,"

1 Q. Would you hold the State to that burden?

2 A. Well, he -- he'd have to prove -- he'd have
3 to prove both, that you're deciding where he was
4 attempting or actually committing the -- the robbery
5 --

6 Q. Yeah, yeah. I mean, they don't have to prove
7 that he actually committed it, they can prove that he
8 attempted to commit it.

9 A. Attempted to commit. Okay.

10 Q. Okay? Or they can prove that he did commit
11 it, okay, that -- they have to prove one of the two.

12 A. Yes, sir.

13 Q. And they can prove either one.

14 A. Right.

15 Q. But they have to prove one of them. Now, he
16 may be guilty of something else. Maybe he is guilty
17 of murder, but not capital murder. I'm not saying
18 that, but what I'm saying is, for them to get to
19 capital murder, he's got -- they have to prove it all,
20 okay? It's not like it's not like, you know, the best
21 of seven series or something like that.

22 A. Right.

23 Q. They've got to run the table.

24 A. Correct.

25 Q. They got to get him on -- I don't know how

22

1 and -- and there's a laundry list of ways you can
2 prove capital murder, but in this particular -- that
3 the legislature has given us -- in this particular
4 instance, what the State is alleging is that this
5 Defendant, on the given day in Nueces County, Texas,
6 committed the offense of murder while in the course of
7 committing or attempting to commit a robbery, okay.

8 So they have to prove murder, plus at the
9 same time he was trying to rob somebody or did rob the
10 victim, okay? That's what they have to prove. And if
11 they can prove all of that, then the Defendant's
12 guilty of capital murder. You understand that?

13 A. That's correct.

14 Q. Okay. Now, it's not enough that they prove
15 just half of it. They got to prove all of the
16 elements of the offense, okay? That is, you may think
17 that they've proven the murder, but they may not have
18 proven the robbery part or vice versa. You may think,
19 well, maybe they proved the robbery part, but they
20 didn't prove the murder part.

21 Now, you understand you can't find his --
22 this person guilty of capital murder, unless they
23 prove all of it, all of what they've alleged. You
24 understand that?

25 A. Yes, sir.

24

1 many elements there are off the top of my head, seven,
2 eight, nine, I don't know, but, in any event, they got
3 to get them all, okay? Would you hold the State to
4 that?

5 A. Not to...

6 Q. To require them to prove all the elements.

7 A. Correct.

8 Q. Beyond a reasonable doubt.

9 A. Correct.

10 Q. Okay. Now, if they do -- well, let tell you
11 how it works. In Texas, we have a bifurcated system,
12 okay? That means we have two parts of the trial.
13 First part of the trial the jury would be asked to
14 listen to the evidence and determine whether the State
15 has proven beyond a reasonable doubt the charge, that
16 is, capital murder, all right? So the jury goes --
17 after the case is done and after we submit it to you,
18 you go back to the jury room, you deliberate and then
19 the jury decides either guilty or not guilty of
20 capital murder. If the answer's not guilty, that's
21 the end of the case, you go home, we all go home,
22 okay?

23 A. Okay.

24 Q. Done. If, however, the Defendant is found
25 guilty of capital murder, then we go to the second

1 phase of the trial, which is the punishment phase.
 2 Now, I will tell you there are two
 3 punishments for capital murder in the State of Texas
 4 for this charge, that is, life in prison or death
 5 penalty, okay?

6 A. Yes, sir.

7 Q. But you don't say it that way, you don't say
 8 life or death.

9 A. Right.

10 Q. In every other case in the State of Texas
 11 where the jury decides punishment, they assess
 12 whatever punishment is available. Maybe it's a term
 13 of years, maybe it's probation, maybe it's a fine,
 14 maybe it's all of those things, okay, but not in a
 15 capital murder.

16 In a capital murder, you're asked to
 17 answer questions, and you answer two one of them, and
 18 they're up here. Here's one of them if you'll look
 19 over your left shoulder, and then you answer this
 20 question: "Is there a probability that the Defendant
 21 will commit criminal acts of violence that will
 22 constitute a continuing threat to society?" Jury
 23 answers, yes or no.

24 Then the jury goes to Special Issue No.
 25 2. "After taking into consideration all the evidence,

1 including the circumstances of the offense," that's
 2 the guilt or innocence phase, okay?

3 A. Okay.

4 Q. And then "the Defendant's character and
 5 background, and the personal moral culpability of the
 6 Defendant, is there a sufficient mitigating
 7 circumstance or circumstances to warrant that a
 8 sentence of life in prison, rather than a death
 9 sentence be imposed," okay?

10 A. Okay.

11 Q. And this is sort of like you take in all,
 12 everything.

13 A. Uh-huh.

14 Q. You take in the case and you take in
 15 everything about the Defendant's background, has he
 16 been a good guy, has he been a bad guy? Does he have
 17 a bad criminal history, does he have one at all? Is
 18 -- other than this particular day, you know, do you
 19 hear evidence that he was a great guy or not? And
 20 then you answer that question, yes or no, the jury
 21 does, okay?

22 A. Correct.

23 Q. My question to you is -- and some people say
 24 they can't do this, okay, they can't -- they can't go
 25 through a process like this that may potentially end

1 up in a death penalty, okay? Some people say, "You
 2 know what, if -- if that's -- if he's guilty of
 3 capital murder, I'm not going to consider life. I'm
 4 not going to answer that question." It's a knee-jerk
 5 reaction, it's death every time.

6 Okay, what I need to know from you is,
 7 could you follow the law, take the oath to listen and
 8 see if the State has proven this case beyond a
 9 reasonable doubt to you? First, that is, could you
 10 deliberate on the guilt or innocence on the capital
 11 murder issue --

12 A. Yes, sir.

13 Q. -- first of all?

14 A. Yes, sir.

15 Q. And then if you found the Defendant guilty,
 16 that is you and the rest of the jurors, could you
 17 answer these questions truthfully?

18 A. Yes, sir, I would.

19 THE COURT: Okay. All righty. Well,
 20 then, I'm going to turn the floor over to Mr. Skurka.
 21 He gets to go first because he's got the burden of
 22 proof.

23 MR. SKURKA: Thank you, Judge.
 24
 25

VOIR DIRE EXAMINATION

2 BY MR. SKURKA:

3 Q. Good morning, Mr. Castaneda.

4 A. Good morning, sir.

5 Q. As the Judge introduced me, my name is Mark
 6 Skurka. I'm an assistant district attorney. This is
 7 Geordie Schimmel. He's also an assistant D.A. that's
 8 assigned in Judge Galvan's Court on a daily basis, and
 9 he's going to be assisting me in trying this case.

10 A. Okay.

11 Q. Let me begin by telling you there's no right
 12 or wrong answers to anything you say. All we want to
 13 know is how you really feel about these things.

14 A. Okay.

15 Q. Sometimes jurors say, "Well, I better answer
 16 it this way because I think the Judge wants me to
 17 answer it this way." You just tell us how you feel --

18 A. Correct.

19 Q. -- and we'll deal with that.

20 A. Okay.

21 Q. That fair enough?

22 A. That's fair enough.

23 Q. Good. Tell me about this -- this. When you
 24 first came into that -- that jury room, remember, a
 25 few weeks ago, when all these people were in there,

1 there was 2- or 300 people in there and the Judge came
2 down and most people didn't know what they were there
3 for until the Judge said, "This is a criminal case.
4 And not only is it a criminal case, but it's a capital
5 murder case where the death penalty could be a -- a
6 decision that you may have to make," what was the
7 first thing that struck your mind when you heard it
8 was that kind of a case?

9 A. Well, being that I never -- I've been on one,
10 I've never -- what hit my -- what -- actually, what --
11 again, it surprised me. I mean, you know, I've been
12 on civil, but never --

13 Q. Uh-huh.

14 A. -- criminal. So, it -- it just opened me to
15 hear it, you know, what -- what kind of murder trial
16 or case it was going to be.

17 Q. Once you heard that initial surprise -- I
18 think a lot of people were surprised -- what did you
19 think then?

20 A. That if I was to be a juror and serve, I
21 would, you know, be fair and honest.

22 Q. Sometimes I watch the people on the jury
23 panel down there, and the Judge says capital murder
24 and death penalty, and some of them go, "Oh, my gosh,"
25 like this, and some say, "Oh, my gosh," they get real

1 affect you?

2 A. No, sir, it didn't.

3 Q. Okay. And what you said is exactly right.

4 You said you thought you better listen and be fair to
5 everything --

6 A. Correct.

7 Q. -- and take it seriously. Obviously, the
8 Judge takes it seriously, we take it seriously, the
9 Defense and Defendant takes it very seriously, but we
10 just need to know where you're coming from --

11 A. Right.

12 Q. -- to see if you can do that. Because I told
13 you the very first day, I mean, I told you, "The State
14 is going to seek the death penalty."

15 A. Correct.

16 Q. "And if you're seated on this jury, there's
17 going to be a time that I'm going to ask you to review
18 all the evidence and find the -- and answer the
19 questions that -- that end up with this Defendant
20 being sentenced to death," and I want you to look at
21 him right now. That's him, John Henry Ramirez. If
22 you think the evidence is there, and if we prove to
23 you beyond a reasonable doubt that he's guilty and the
24 question should be answered in such a way that he gets
25 the death penalty, can you impose it as a juror?

30

1 upset, and then some people go, "I better listen a
2 little closer, this is pretty important stuff," and
3 they straighten up and listen. They may have been
4 kind of joking around before --

5 A. Yes, sir.

6 Q. -- but they take it seriously.

7 A. That's correct.

8 Q. How do you -- how did you --

9 A. I take it serious.

10 Q. That's how it was with you?

11 A. Yes, sir.

12 Q. So it didn't bother you that you were going
13 to have to be making this kind of decision if you get
14 called on this jury?

15 A. No, sir.

16 Q. Okay. I mean, you didn't have any, like,
17 moral or religious reasons to say, "Well, I can't sit
18 on this kind of jury?"

19 A. No, sir.

20 Q. And that's fine if you do. Some people say,
21 "Well, gosh, you know, I'm so against the death
22 penalty because of my religious convictions or my
23 moral feelings, I just couldn't sit on this kind of
24 case. I can sit on a D.W.I. or a civil case, but not
25 this kind of case." But that kind of thing didn't

32

1 A. Yes, sir.

2 Q. Okay. And -- and I had to pin you down on
3 that because sometimes people say, "Well, gosh, you
4 know, I believe in the death penalty. I think it's a
5 good law, but don't make me do it," you know?

6 A. Right.

7 Q. And -- and, you know, that's the person over
8 there, it's not somebody you read about, you know, on
9 -- in the paper or see on T.V. That's him.

10 A. Right.

11 Q. So you think you can go through with it if
12 it's called upon? Based on the evidence, of course.

13 A. I'm sure I can.

14 Q. Okay. Now, it says that -- well, so how do
15 you feel about being on the jury? Say you get picked
16 on this jury and you're in there, how do you feel
17 about being on the jury that has to make that ultimate
18 decision?

19 A. Well, technically, I feel like I would be
20 serving the law, first of all.

21 Q. Uh-huh.

22 A. Again, you take everything into consideration
23 as far as, you know, evidence and witnesses and
24 proving guilty or not guilty --

25 Q. Uh-huh.

1 A. -- and then decide from there.

2 Q. So it seems to me that you're pretty strong

3 in believing that the law of the land is the law of

4 the land.

5 A. And we all have to obey it.

6 Q. And -- and that's -- that's -- everybody has

7 to obey it, no matter if you're rich or poor, --

8 A. Correct.

9 Q. -- young or old, black or white, everybody

10 has -- is treated equally. That's what America's

11 built on.

12 A. Yes, sir.

13 Q. You have to treat it -- and if, as a citizen,

14 like you and your family, you know you have to obey

15 the law or there's consequences if you don't.

16 A. Correct.

17 Q. And -- and that most people of age should

18 know that.

19 A. Right.

20 Q. Wouldn't -- did you think anything about

21 his -- his age or something when you first looked at

22 him?

23 A. No, sir.

24 Q. Okay. Why not?

25 A. Well, I mean, when -- you know, when I -- I

1 want to use the right word, but when somebody commits

2 a crime, if you will, okay, you don't -- they commit

3 it, but if it's female, male, young or old, it's a

4 crime committed, and that's what I -- I look at.

5 Q. Some people say, "Well, gosh, you know, he

6 looks so young. He looks so -- he looks like he

7 couldn't hurt a fly, right now, you know? He looks

8 like a kid," and I always tell them what the law is,

9 you can't execute a kid under 18 years old. The law

10 just says, in Texas, no, that's too young. But would

11 you agree with me that anybody that's of age, like in

12 the mid 20s, doesn't really matter if they're 20, 25,

13 30, 35, 40, 45 once you're of age, you should know the

14 difference between right or wrong and what the law is?

15 A. That's correct.

16 Q. Okay. And we're not talking about somebody

17 who's under 18. Obviously, he's -- he's way over 18.

18 But sometimes people go, "Oh, my gosh, he looks so

19 young, he couldn't hurt anything." Would you agree

20 with me with this statement, you can't judge people by

21 how they look, you judge them by what they do?

22 A. That's correct.

23 Q. Would that be a fair statement?

24 A. That's a fair statement.

25 Q. You know, I always say that because sometimes

1 people say, "Well, gosh, he looks so different," and I

2 go, "You can't make a decision on looks."

3 A. Right.

4 Q. Have you ever heard of that guy, Ted Bundy,

5 that killed all those women? You know, he killed a

6 bunch of women. He's a young, handsome-looking guy,

7 but he killed, I don't know, 15 women. So you can't

8 make a judgement based on how they look.

9 A. Right.

10 Q. Not everybody looks like Charles Manson. If

11 you remember Charles Manson.

12 A. Oh, yeah.

13 Q. I mean, you look at that guy, he looks scary.

14 A. Uh-huh.

15 Q. But would you agree with me that that's not a

16 decision you should make --

17 A. Because of what he looks like.

18 Q. -- because of what they look like?

19 A. No, sir.

20 Q. Okay. Good. We're on the same page, then.

21 Now, the Judge told you that this is murder plus

22 robbery, and I want to cover over that a little bit.

23 Remember, the law says you can only get capital murder

24 if it's a certain type of murder under certain

25 circumstances, generally, murder with something else

1 being there, like killing the cop on duty, or killing

2 a kid under six years old, or murder plus robbery,

3 burglary, kidnapping, rape, things like that.

4 So, in this case, what the Judge said was

5 exactly right, it can be while committing a robbery or

6 in the course or attempting to commit a robbery. In

7 other words, it's like people tell me, well, say, for

8 example, somebody goes in to rob a bank and they go in

9 there with a gun and tell the teller, "Give me all

10 your money," but then the cops get there in time and

11 he never really gets any money, does that mean he

12 didn't commit robbery?

13 A. No.

14 Q. No. He did commit robbery. He was

15 attempting to commit robbery and he did commit

16 robbery, he just didn't get to finalize the robbery,

17 so to speak. You see what I'm saying?

18 A. Yes, sir.

19 Q. So he can't get up there and say, "Hey, I

20 didn't -- I didn't actually take anything. I didn't

21 get the money I wanted, so I'm not guilty." He can't

22 say that. Right?

23 A. Okay. Right.

24 Q. And that's what the Judge -- the Judge will

25 give you some further instructions on that later if

1 you sit on this jury, but that's what it just says,
2 murder in the course of committing attempt --
3 committing a robbery or in the course of attempting to
4 commit robbery.

5 Now, there's two parts to the trial, what
6 the Judge said. We use that big word called
7 "Bifurcated," but that basically means there's part
8 one and part two. The first part, obviously, is did
9 he do it or not, is he guilty or not? Because you
10 have to decide that first before you can decide what
11 the punishment is, right?

12 A. Yes, sir.

13 Q. And the law kind of goes in that little
14 procedure. First of all, you just listen to all the
15 evidence about that night or that day and decide did
16 he do it or not. If he -- if you don't think he did
17 it, then you find him not guilty. If you think he did
18 it, you find him guilty, then you move on to the
19 second phase, and you're not supposed to kind of
20 combine those two.

21 A. Right.

22 Q. Even though in the second phase you can
23 consider everything you heard the first time because
24 obviously that's evidence, but the second part you
25 might get to hear additional evidence to help you

1 It says, "Is there a probability that the Defendant
2 would commit criminal acts of violence that would
3 constitute a continuing threat to society?" We call
4 that "the future dangerousness question." Basically
5 means do you think he's going to be a danger in the
6 future, is he going to hurt somebody else or commit
7 criminal acts of violence in the future? Now, it
8 doesn't say that you know that for sure, for
9 certainty. Unless you have a crystal ball, it's kind
10 of hard to tell what a person's going to do in the
11 future, but sometimes people say you can predict
12 what's going to happen in the future by looking at
13 their past, right?

14 A. Right.

15 Q. Okay? And the law says, "Is there a
16 probability," which means more likely than not, "that
17 the Defendant would commit criminal acts of violence."
18 It doesn't even have to be murder. Some people say,
19 "Well, gosh, I can only give him the death penalty if
20 I think he's going to murder again." It doesn't say
21 that, it just says, "any criminal acts of violence,"
22 which could be, I don't know, burglary or kidnapping
23 or beating somebody up, assault, anything, "that would
24 constitute a continuing threat to society."

25 And society's a big word because some

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1 decide how to punish a person. Don't you want to know
2 -- it would seem to me that you would want to know
3 what the person's background is before you make a
4 decision, because right now you know nothing about the
5 guy, right?

6 A. That's correct.

7 Q. I mean, he's presumed innocent, and you've
8 agreed with that, but you might get to hear additional
9 evidence. Then you don't just vote, "Well, we vote
10 for death," or, "We vote for life," on the -- on the
11 verdict form. What you do is you answer some
12 questions, we call them "special issues" that kind of
13 lead to decide, based on the evidence, if he's going
14 to get the death penalty or life in sentence -- or
15 life in prison, I'm sorry.

16 So -- and the -- and the scenario would
17 be you found him guilty, you go to the second phase of
18 the trial, you hear additional evidence, and you might
19 want -- you might get to hear, like, you know, he was
20 an Eagle Scout when he was a kid or maybe you hear
21 that he's been to prison ten times before. Those are
22 the kind of things that you -- the circumstances you
23 want hear to decide how to punishment them.

24 And the questions are right there on the
25 board and I'll ask you to read the first one with me.

40

1 people tell me, they say, "Well, Mark, you know, why
2 do you have to put the death penalty? Why can't you
3 lock him up in prison? That way he's away from
4 society and won't hurt anybody," and I always go,
5 "Wait a minute, who else is in a prison?" Tell me.

6 A. Who else?

7 Q. Who else would be in a prison?

8 A. Other -- other --

9 Q. Other prisoners. Who else? Guards, medical
10 people, people that work at the prison, right?

11 A. Society.

12 Q. Society. So prison is really in society?

13 A. Yeah.

14 Q. It's not like we have a desert island and we
15 put somebody out there where they never see another
16 human being.

17 A. Correct.

18 Q. So when people say, "Well, that will take
19 them away from society," I tell them, "there's still
20 other people there." Have you ever heard about that
21 happening where, like, an inmate hurts a guard or
22 kills a guard --

23 A. Yes, sir.

24 Q. -- or hurts another person in prison? That
25 happens, right?

1 A. Trying to escape.

2 Q. So just -- just putting them in prison isn't
3 going to lock them away from people forever, they
4 could still cause trouble. And that's what the law
5 says, "Yes or no, is there a probability, is there a
6 good chance that the Defendant would commit criminal
7 acts of violence that would constitute a continuing
8 threat to society"?

9 Now you see why we call it "the future
10 dangerousness." Yes or no, do you think he's going to
11 do that? And you base it on probably what he did here
12 and what he did in the past because sometimes people
13 say, "Well, gosh, he doesn't have -- he hadn't been to
14 prison ten times before." The law says you can make a
15 decision based on what he did in this case. He may
16 not have any priors, but as long as you think he's a
17 continuing threat to society, you could answer that
18 question yes.

19 Then you answer the second question over
20 here. The second question deals with that big word we
21 use called "mitigating circumstances." I didn't know
22 what mitigate was --

23 A. I didn't either.

24 Q. -- so don't feel bad. Before I went to law
25 school and started doing these cases, I didn't know

1 minutes to change a tire, and so, I would have been
2 home by 10:45, but, you know, I got -- I was a little
3 delayed."

4 The second kid, you have the second kid,
5 we'll call him the bad kid. I'm sure you don't have
6 any bad kids.

7 A. I don't have any kids at all.

8 Q. Well, I'm just making --

9 A. Yeah, yeah, right.

10 Q. The second kid is -- comes in and he doesn't
11 come in just a little past 11, he comes in at 3:00 in
12 the morning, way past the deadline, and you say, "What
13 the heck happened to you? Why were you so late," and
14 he says, "Oh, we had a party, and we're drinking and
15 we were having a good time and doing this, and -- and
16 I just didn't think about coming home." And then this
17 isn't the first time he's done that, in fact, "This is
18 like the 15th time you've broke curfew."

19 Now, look to this, would you treat those
20 people in your punishment, they both violated curfew,
21 right --

22 A. Uh-huh.

23 Q. -- both equally did the same crime, but would
24 you punish them the same?

25 A. No, sir.

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1 what mitigating either -- was either. I guess an easy
2 way to say it is it's kind of the opposite of
3 aggravating. There's aggravating factors and there's
4 mitigating circumstances. Some people tell me it's
5 kind of like an extenuating circumstance, he did it,
6 but there's some extenuating circumstances. The legal
7 definition is, "mitigating is anything that would
8 lower or make less severe the sentence, or anything
9 that would reduce the Defendant's moral
10 blameworthiness." That sounds like lawyer talk,
11 again.

12 A. Uh-huh.

13 Q. Let's go to something easier to handle.
14 "Sufficient mitigating circumstances." Say, for
15 example, you have two kids and you have an 11:00
16 curfew, and the 11:00 curfew is inviolate. I mean,
17 you have to be home by 11:00. And you have one kid,
18 and we'll call him, you know, Good Kid, he never
19 violates curfew. He's always back by 11:00, got his
20 homework done, in bed by 11:00. Never gives you any
21 trouble, and one time he comes home at 11:03. First
22 time he's ever done that, and he came home at 11:03.
23 And you get mad at him and you say, "Why did you come
24 home at 11:03? You're supposed to be home at 11:00."
25 He says, "Dad, I had a flat tire. It took me 15

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1 Q. No, it wouldn't make sense to you because the
2 first kid, he's got mitigating circumstances. This is
3 the first time he was late, he was just three minutes
4 late and he had a pretty good excuse that he had a
5 flat tire. So you might say, "Okay. You broke the
6 rules and I'm going to ground you for a couple of
7 days," but that's it.

8 The second guy, oh, my gosh, he came in
9 four hours late. He -- he's done it 15 times before
10 and he didn't even have a good excuse.

11 A. Uh-huh.

12 Q. Those are aggravating circumstances.

13 A. Okay.

14 Q. And that's what that -- that thing is for.
15 It says, "Okay, jury, do you think John Henry Ramirez
16 is guilty of capital murder, you think he's a
17 continuing threat to society," but the Judge says --
18 and it looks like he's headed toward the death
19 penalty, but the Judge says "Look at this Special
20 Issue No. 2. Take into consideration all of the
21 evidence, including the circumstances of the offense,
22 his character and background and the personal moral
23 culpability of the Defendant, is there a sufficient
24 mitigating circumstances to warrant that a sentence of
25 life, rather than death sentence be imposed?" In

1 other words, is there any reason that you should lower
2 the sentence? There may not be, there may be.

3 Like in our first case -- the scenario I
4 told you about, there was a reason to give him a less
5 punishment of, like, two days grounded, where the
6 other guy probably got, you know, three months
7 grounded --

8 A. Uh-huh.

9 Q. -- but because there were reasons for it, and
10 that's what the Judge is saying, stop and consider.

11 A. Okay.

12 Q. Don't rush into anything. Stop and think.
13 Is there anything about the circumstance of the
14 offense, like what happened that day, his character
15 and background, because you probably want to know. I
16 mean, was this guy an Eagle Scout that helped little
17 old ladies across the street or has this guy been to
18 prison ten times before? See, the second part of the
19 trial, you might get to hear some of that background
20 information, whether he's had any kind of history, if
21 he's a good guy, he's a bad guy, whatever. You may
22 hear people get up there and say, "Hey, he's a good
23 guy. I've known him forever and he's a good guy."
24 Then you may hear other people say, "Well, he's always
25 been bad kid, he's always been bad," you know? I

1 don't know, you'll have to -- but the question is what
2 is a mitigating circumstance? I can't even tell you
3 that. That's up to the jury here to decide because
4 some people may say, "Well, you know, that -- that --
5 that's a mitigating circumstance, you know, he was an
6 Eagle Scout, maybe he's young, maybe we should give
7 him a break because of that."

8 Other jurors may say, "Look, I don't care
9 if he was an Eagle Scout, you know, 20 years ago. He
10 still did this crime and he's got to pay the
11 consequence for this crime. That's not enough." And
12 that's what this says, is it enough, is it sufficient,
13 does it rise to a level that you have to kick out the
14 death penalty and give him a life sentence instead?
15 But that's up to the jury to decide.

16 This Judge will never tell you "This is
17 automatically a circumstance that you have to lower
18 the punishment." And, my gosh, there's all kinds of
19 various things, you know, could be -- I said Eagle
20 Scout, but it could be, you know, come from a broken
21 home, or, you know, was a decorated war veteran, or,
22 you know, helped his mother with the laundry everyday.
23 I don't know, you know, but the question is, is it
24 enough to outweigh the death penalty? And that's kind
25 of -- it's kind of like a balancing test the jury has

1 to do. Is it enough to make it a real low sentence, a
2 life sentence instead of death sentence? Maybe it's
3 not.

4 Now, one other thing I should point out
5 is sometimes people say -- well, there is a law that
6 goes like this, "Voluntary intoxication is not a
7 defense to crime." If you go get yourself drunk or
8 high on drugs and you go commit a crime, can you say,
9 "Well, I'm not guilty, I was drunk when I did it?"
10 No. The law says no. Like the bank robber who goes
11 in and robs a bank and they catch him red-handed, and
12 he goes, "I'm not guilty. I was drunk when I did
13 that." No.

14 The law says that cannot be an excuse to
15 crime, but it might be a possible mitigating
16 circumstance. Say somebody did a burglary case and
17 they were just drunk and went in a house and was
18 messing around in the house. Well, it's not right,
19 but the question is, well, he did it because he was
20 drunk. Some people might say it's a mitigating
21 circumstance. Other people say, "I don't care if he
22 was drunk or not, you know, he still did this burglary
23 case."

24 You know, for example, like, we'd never
25 even have a D.W.I. case if you had that, because

1 people say, "Well, I was drunk, I'm not guilty of
2 D.W.I." But that's a serious case in itself, okay?

3 Do you understand the scheme of that?

4 A. Yes, sir.

5 Q. Does that kind of make sense?

6 A. Yes.

7 Q. Because, first, you see whether he's guilty
8 or not --

9 A. Uh-huh.

10 Q. -- then you see if he's a continuing threat
11 to society, and -- but before you give the death
12 penalty, you have to go back and say, "Hey, let's look
13 at the big picture --"

14 A. Picture.

15 Q. -- is what I say. Is there a sufficient
16 thing to warrant they get a sentence of life, rather
17 than death sentence? And all the Judge is asking you
18 to do is you have to consider these things, doesn't
19 mean you have to agree with these things, you know?

20 I mean, like I said, he may say he was
21 drunk when he did it, he may say he was an Eagle
22 Scout, he may say, "I've never been to prison before."
23 It doesn't matter. It's up to the jury to decide how
24 much weight to give that. Does that sound fair?

25 A. Yes, sir.

1 Q. Okay. Any questions about that?

2 A. No, sir.

3 Q. So you understand that by sitting on this

4 jury, you're agreeing to listen to everything --

5 A. Yes, sir.

6 Q. -- and if -- and if the answer should be that

7 he -- the State doesn't prove the case beyond a

8 reasonable doubt, you have to find him not guilty,

9 right?

10 A. Correct.

11 Q. And if you do find that beyond a reasonable

12 doubt, you do find him guilty, correct --

13 A. Correct.

14 Q. -- and if the Court -- you answer the

15 questions in such a way that you think he deserves the

16 death penalty, can you vote that way and carry it out?

17 A. Yes, sir.

18 Q. And if you think that the questions are

19 answered in such a way that he's not a continuing

20 threat to society and maybe there are some mitigating

21 evidence -- circumstances, can you vote for a life

22 sentence, instead of a death sentence?

23 A. Yes, sir, I can.

24 Q. So you're kind of open-minded for either one.

25 A. Yes.

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1 Q. And I'm guessing that you're going to wait

2 till you hear all the evidence.

3 A. Correct.

4 Q. And that's all we can ask a jury to do --

5 juror to do. Thank you.

6 I need to ask you about this situation

7 about your nephew now.

8 A. Okay.

9 Q. It said some -- your nephew was involved in a

10 criminal case --

11 A. Yes, sir.

12 Q. -- and charged with murder or something?

13 A. That's correct.

14 Q. Can you tell me a little bit about that, when

15 that was, where it was?

16 A. This happened back in '82, and it was in

17 Annville. He worked for Sinclair, which is now

18 Valero in Three Rivers as an operator.

19 Q. Uh-huh.

20 A. And, apparently, his wife was cheating on

21 him. And his neighbor at one time or another when he

22 was in graveyard shifts would tell him that there was

23 -- there would be a Cadillac coming in at 1, 2 or 3:00

24 in the morning. So he kind of asked him, "Well, next

25 time you see that Cadillac, I'd appreciate if you

1 called." So he did. He went home and caught her,

2 and, apparently -- I mean, this is hearsay, I wasn't

3 there, but what had happened is he ran through the

4 front door -- he came in through the garage, the back

5 door. He ran through the front door, but as he was

6 trying to get his clothes and stuff --

7 Q. You talking about the guy that was in the

8 car?

9 A. The guy that was there, yes, sir. And he was

10 trying to scare him, so he went for a -- for the gun

11 case and pulled out a shotgun. And while he was

12 trying to scare him, she grabbed the shotgun and it

13 went off and hit the roof, and then he still followed,

14 so she went and got another one and he heard a click,

15 so he turned around and shot her --

16 THE COURT: I think Tinker and Mike --

17 VENIREPERSON NO. 22: -- three times.

18 THE COURT: -- Hummell tried that case.

19 VENIREPERSON NO. 22: Yes, sir.

20 Q. (By MR. SKURKA) I recall that, but that was

21 past --

22 A. Tinker.

23 Q. -- '82. That was later than '82, right?

24 THE COURT: It was like '92.

25 VENIREPERSON NO. 22: It was '92, I

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1 think.

2 Q. (BY MR. SKURKA) Yeah, I thought you said '82.

3 A. I'm sorry, I did, I did. I correct myself.

4 Q. I remember that case, too.

5 A. He was my nephew.

6 Q. I started at the D. A.'s office in '86, and

7 the facts sounded very familiar to me.

8 A. Yes, sir.

9 Q. It was in their bedroom, I believe --

10 A. That's correct.

11 Q. -- is when it happened. And what happened on

12 the case, do you remember?

13 A. Well, he -- when he shot her, he said that

14 she shot him on the -- on the -- by the chest, and she

15 was in pain and everything else so he shot her two

16 more times to -- so she wouldn't be in pain, which was

17 a bad choice, in my case. And, you know, I mean -- I

18 mean, it hurts, because he's a nephew that just lost

19 it at that time, but if I'd --

20 Q. We have a part in the law called "voluntary

21 manslaughter" for that. If you do some act under --

22 without clear reflection of thought, under passionate

23 -- it's kind of like a passionate-type thing.

24 A. Yes, sir.

25 Q. Did he get convicted of voluntary

1 manslaughter or found not guilty or was he found
 2 guilty of murder?
 3 A. Uh --
 4 THE COURT: I think he got voluntary, 20.
 5 VENIREPERSON NO. 22: I think so.
 6 Q. (BY MR. SKURKA) I can't remember the details,
 7 what happened, but you think that's probably what it
 8 was, too?
 9 A. Yes, sir.
 10 Q. Yeah. And then that's kind of what the law
 11 provides for. You can kill somebody intentionally,
 12 like, you know, you went over there and intended to
 13 kill somebody, or then you have sudden passion arising
 14 from adequate cause, which makes it a lower thing,
 15 instead of a full range of punishment of murder.
 16 A. Yes, sir.
 17 Q. And so, he didn't -- apparently, had to
 18 suffer the consequences of that --
 19 A. Yes, sir.
 20 Q. -- although -- and now, it's like, basically,
 21 he caught the "Sancho," but, you know, you can't --
 22 you still can't kill him.
 23 A. Right.
 24 Q. Did you -- did you participate in that trial
 25 in any way? Did you, like, testify for somebody or

1 what we had," period, but everybody's different.
 2 Q. In other ways (sic), there's different ways
 3 to handle that --
 4 A. Correct.
 5 Q. -- besides killing somebody.
 6 A. Correct.
 7 Q. And, again, going back to what you said
 8 earlier about, you know, you believe in the law, the
 9 law pretty much says you're not supposed to take
 10 somebody's life.
 11 A. Well, at the same token, I do believe, if I
 12 was in his case -- to come back to this incident, I
 13 would have been more physical, if you will, by hand
 14 versus weapons.
 15 Q. I understand. Maybe slap the woman or hit
 16 the man?
 17 A. You got to understand, she was my wife and I
 18 would have, you know, be hurt --
 19 Q. Sure.
 20 A. -- I mean...
 21 Q. No one knows how a person's going to react in
 22 that circumstance. And, unfortunately, your nephew
 23 may have made some bad decisions --
 24 A. That's what --
 25 Q. -- but the consequences are there --

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1 anything?
 2 A. No, sir, I didn't.
 3 Q. Did you follow it pretty closely?
 4 A. Yes, sir, I did. I never went to a hearing,
 5 for the simple reason that the family of the deceased
 6 were close friends and I had a problem with it.
 7 Q. So you knew both of them.
 8 A. Even -- I knew her by friendship, and, of
 9 course, he's -- he's a relative.
 10 Q. So you -- you were related to one person, but
 11 the deceased was a friend, too.
 12 A. Correct.
 13 Q. So it put you in a bad position, huh?
 14 A. Correct.
 15 Q. Well, tell me about how you feel about what
 16 happened to your nephew. And the reason I have to ask
 17 you this is --
 18 A. That's fine --
 19 Q. -- because --
 20 A. That's fine. I -- everybody's responsible
 21 for their own acts is my -- is my point of view. If
 22 you intend to do wrong -- of course, I put myself in
 23 his shoes. Lord knows what would have happened, but
 24 in my opinion, if I had caught her, I would have done
 25 away with her as far as divorce, "You just lost out

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1 A. Right.
 2 Q. -- on these things. I always tell people
 3 whenever we see these, like, battered women getting
 4 killed by their husbands or something like that, and,
 5 I'm talking about get caught --
 6 A. Right.
 7 Q. -- cheating --
 8 A. Right.
 9 Q. -- and battered, I always say, "Why don't
 10 they just get a divorce, why do they have to go kill
 11 each other?"
 12 A. Right.
 13 Q. It's just crazy. The reason I'm asking you
 14 is because obviously our office prosecuted him. Mike
 15 Hummell used to work with me,
 16 A. Uh-huh.
 17 Q. -- the prosecutor in that. Is there any bad
 18 feelings towards --
 19 A. No.
 20 Q. -- the D.A.'s Office for doing their job?
 21 A. (Shakes head.)
 22 Q. Okay. Because some people say, "Ah, you-all
 23 put my brother in jail, you-all put my nephew in jail.
 24 You-all are bad guys." I'm just --
 25 A. No.

1 Q. -- is there anything lingering there?

2 A. In this case, it wouldn't be, in my part, a

3 judgement, cause, again, it went through court, it

4 went through jurors. They decided and that's what

5 they came to.

6 Q. And that's a fair answer because --

7 A. That's a fair answer.

8 Q. -- we all know it's up to the jury to decide.

9 We can think -- we can think all we want because we --

10 what we see on the news or read --

11 A. Right.

12 Q. -- or hearsay, but the jury makes the

13 decision. And -- and you might be having to make a

14 pretty tough decision here, too. It's an awesome

15 responsibility but you seem to think you're up to it,

16 right?

17 A. Yes, sir.

18 Q. And you can do whatever needs to be done?

19 A. Correct.

20 Q. If you think it goes one way, you can vote

21 that way, if you think it goes the other way, you can

22 vote the other way.

23 A. That's true.

24 Q. Okay. I don't think I have any other

25 questions for you. Do you have any questions of me,

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1 Mr. Castaneda?

2 A. No, sir, I don't.

3 MR. SKURKA: Thank you so much for

4 listening to me. I'll let the Defense talk to you

5 now.

6 VENIREPERSON NO. 22: Thank you.

7 MR. GARZA: May I proceed, Your Honor?

8 THE COURT: Yes.

9 MR. GARZA: Thank you.

10 VOIR DIRE EXAMINATION

11 BY MR. GARZA:

12 Q. Good morning, Mr. Castaneda.

13 A. Good morning, sir.

14 Q. As you have -- as I have previously

15 introduced myself, I'm Ed Garza. I'm a local attorney

16 here in Corpus Christi. I'm a life-long resident of

17 Corpus Christi, born and raised here. Mr. Grant

18 Jones, who was formally our D.A., elected D.A. years

19 back is my Co-Counsel.

20 A. Okay.

21 Q. And we represent, of course, John Henry

22 Ramirez sitting right there next to Mr. Jones.

23 A. Okay.

24 Q. It's very important for us as defenders, as

25 defense lawyers, to take the matters of jury

1 selection, when we have the very grave responsibility

2 of representing this young man to make sure that we

3 pick or select or eliminate people that we feel can't

4 be fair and impartial. And what we want to ask you

5 and talk to you about this morning is nothing personal

6 at all, but we do sort of, you know, want to get an

7 idea of -- of your -- your capacity to sit as a juror

8 and think through this process and -- and be fair to

9 both sides.

10 A. Okay.

11 Q. Okay?

12 A. Yes, sir.

13 Q. I noticed that in your questionnaire you

14 mentioned that when were you asked how you felt about

15 the death penalty, you stated, "It's the law and I

16 feel that we have to do what's right. In this case,

17 the death penalty, if found guilty, it protects all of

18 us."

19 A. That's correct.

20 Q. What did you mean by that?

21 A. Well, according to the -- the evidence, and

22 if it -- if it proves that he could be, again, a

23 threat to society, among the jurors it's -- it's

24 balancing on the -- on the evidence. I meant if

25 that's what's -- was chosen by the whole jury, then I

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1 would also agree, that would be the case, is what I

2 meant.

3 Q. How do you personally -- I know it's

4 something maybe you don't talk about every day, --

5 A. Correct.

6 Q. -- you know, in your --

7 A. Correct.

8 Q. -- in your -- in your day-to-day, either work

9 or, you know, --

10 A. Right.

11 Q. -- how you carry on, but how do you

12 personally feel about the death penalty?

13 A. Honestly, being asked for the first time, I

14 feel we got to serve justice. If the death penalty,

15 again, it's a threat to society, then I -- I would

16 vote or -- or agree to -- to do what's right.

17 Q. Okay.

18 A. What I'm saying is, it's not so much as far

19 as choosing for or against the death penalty, but if

20 he's a threat to society, I honestly feel that he's

21 done it once, or whatever the case may be, whatever

22 they prove, and if it's too many times, then I

23 honestly feel that somebody else from society is in

24 danger of their lives. And it's -- it's just hard for

25 me to -- to think like that.

1 So depending on -- on the situation and
 2 the case, again, he might even be innocent. Again, it
 3 all depends on the -- on the --
 4 Q. Well, basically, we want to know right now,
 5 do -- do you feel like our client's guilty?
 6 A. Well, I can't -- I can't say yes or no,
 7 because I don't know -- I haven't heard what happened.
 8 Q. What does the presumption of innocence mean
 9 to you?
 10 A. I didn't really understand that as far as --
 11 Q. The presumption of innocence, what does that
 12 mean to you as a legal concept? What does it mean?
 13 Do you agree -- and I think you did say that -- I
 14 think you said that a defendant in a criminal case
 15 should be presumed innocent until the State proves his
 16 guilt beyond a reasonable doubt. Do you agree with
 17 that?
 18 A. To prove, yes, sir, I do.
 19 Q. Okay. So --
 20 A. Beyond a reasonable doubt.
 21 Q. -- so right now, as my client sits there, is
 22 he guilty or innocent?
 23 A. Of the crime?
 24 Q. Right.
 25 A. Yes, sir, he's guilty. In my -- well, he's

1 trial, do you honestly believe the State must have
 2 gotten their man?
 3 A. I don't know.
 4 Q. Well, because you answered that you did, so
 5 I'm a little nervous about that.
 6 A. Well, you're -- you're assuming that, if the
 7 State is saying if he's guilty. I can't say he's
 8 guilty until -- he's here for the reason that he
 9 committed a crime.
 10 Q. But can you agree with me that he's innocent
 11 until they do that?
 12 A. Yes, sir, he's innocent until proven guilty,
 13 yes, sir.
 14 Q. That's what the presumption of innocence is
 15 all about.
 16 A. Okay, okay.
 17 Q. You understand that's what we're talking --
 18 A. Yes, sir, now, I do.
 19 Q. -- about?
 20 A. Yes, sir.
 21 Q. But, see, you said that he must be here
 22 because he committed a crime. Is that -- is it safe
 23 to assume that you've already formed an opinion?
 24 A. No, sir.
 25 Q. Okay. But you figure he's here because of

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1 charged on it, so I'm assuming he's guilty, yes.
 2 Q. And that's the way you feel about it,
 3 honestly?
 4 A. Yes, sir. Yeah, or he wouldn't be here.
 5 That's how I look at it.
 6 Q. Okay. So really, as far as the presumption
 7 of innocence, we're safe in assuming that you probably
 8 don't believe in that, you don't agree with it.
 9 A. No.
 10 Q. You don't agree with --
 11 A. Well, I don't -- agreeing to his innocence
 12 and guilt, again, I don't know till I hear the
 13 evidence. He's here for the charge of committing a
 14 crime. Yes, I believe that, because he's here for it.
 15 Q. And because he's here for it, do you
 16 automatically feel like he's guilty of it?
 17 A. No, sir.
 18 Q. Because I need to understand --
 19 A. Right, right, right. No.
 20 Q. You've already made me a little nervous.
 21 A. Right. No, no, no.
 22 Q. I'll be real honest with you.
 23 A. Right. No, I'm honest, too, I mean...
 24 Q. Are you under the assumption that because
 25 he's been indicted and we're here sitting before

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1 that?
 2 A. Do I say he's here because he committed a
 3 crime?
 4 Q. Uh-huh.
 5 A. According to what the -- the -- the case is,
 6 yes, I'm sure -- I'm assuming he committed a crime.
 7 That's why he's here, yes.
 8 MR. GARZA: Your Honor, can we take -- we
 9 have a motion to present to the Court --
 10 MR. SKURKA: May I talk to him, first,
 11 Judge, please?
 12 THE COURT: Do you pass?
 13 MR. GARZA: No, Your Honor, I do not. I
 14 want to take a motion up with the Court, outside the
 15 presence of the juror. I have not passed. Before any
 16 further questioning, Your Honor. I have not passed
 17 the juror.
 18 MR. SKURKA: Well --
 19 THE COURT: All right. Well, I'll let
 20 you do that, but, I mean -- okay.
 21 Would you step in the jury room?
 22 VENIREPERSON NO. 22: Sure.
 23 (Venireperson exits courtroom.)
 24 MR. GARZA: I think he has clearly
 25 already said it, and quite clearly more than two or

1 three times, Judge, that he is under the assumption
2 that our client is guilty of a crime. And -- and I
3 keep asking him, and there's no difficulty with the
4 other jurors in understanding the presumption of
5 innocence. He has difficulty with it. I don't think
6 he properly understands, one, the concepts of giving
7 us a clear playing field in this case. So I think
8 he's already stated on the record, quite firmly, more
9 than two or three times that he has made an
10 assumption, therefore he has made -- he's biased and
11 he's made a decision about this case. And, basically,
12 all he's going to do is end up rubber-stamping
13 whatever you-all can prove in this case.

14 THE COURT: Okay.

15 MR. SKURKA: May I respond, Your Honor?

16 THE COURT: Yes.

17 MR. SKURKA: Judge, I think this juror
18 was unsure about some of the terminology used.
19 When -- when he kept saying the presumption of
20 innocence, this juror didn't understand what that --
21 presumption of innocence, but when he asked him,
22 "Well, do you think that he's automatically guilty,"
23 he said, "No, I don't feel he's automatically guilty."
24 He says, and I even wrote down he quotes, "He is
25 innocent until proven guilty." He just didn't

1 understand when it was called "the presumption of
2 innocence," because that's a layperson that doesn't
3 understand it all the time, but he did under the basic
4 concept that he's innocent until proven guilty.

5 Mr. Garza also asked him, "Have you
6 already formed an opinion," and he said, "No, I have
7 not formed an opinion." Now, what he was saying was,
8 I'm assuming that something's happened or he's charged
9 with something because he's here," but he didn't say
10 that he feels that he's already guilty because he's
11 here, and I'd ask permission to --

12 THE COURT: I -- I don't think you've
13 gotten there, Mr. Garza. I think -- I think he is --
14 he has answered some questions that -- that give me
15 concern, and -- and you may end up -- I may end up
16 agreeing with you on a strike for cause, I'm not
17 there, yet, but I -- I agree with you that he has said
18 some things that causes me some concern.

19 MR. SKURKA: And, Judge, I don't have a
20 problem with you talking to him about that, too, --

21 THE COURT: I'm going to ask him.

22 MR. SKURKA: -- if you want to you,
23 because I think he just doesn't understand some of the
24 language.

25 MR. GARZA: May I have just a minute,

1 Judge? I want to specifically state my objections and
2 quote the law on the matter to preserve the matter for
3 error, out of an abundance of caution, with respect to
4 bias.

5 THE COURT: Let me ask you, gentlemen, I
6 mean, here's where I'm at, and -- and we're shifting
7 gears a little bit, Mr. Garza. I'm going to let you
8 make your objection.

9 MR. GARZA: Yes, Your Honor.

10 THE COURT: I got to get Ann working on
11 this. I guess -- Tinker's thing's at 2. I'm going to
12 --

13 MR. JONES: Tomorrow.

14 THE COURT: Tomorrow.

15 MR. JONES: Yep.

16 THE COURT: So he can bring in the
17 morning people.

18 MR. JONES: Yeah.

19 THE COURT: And neither will -- I'm a
20 little nervous about the 11:00 person. I guess we can
21 try.

22 MR. JONES: When does it start?

23 THE COURT: It's at 2.

24 MR. SKURKA: I would bring the 11:00
25 person in at 10:00. I don't foresee seating Juror No.

1 41.

2 THE COURT: Okay. Well, we can call the
3 11:00 person for tomorrow and have him come in at 10,
4 okay? So we'll do the -- we'll do the morning people,
5 then, Thursday morning people are going to have to go
6 to Friday morning. Friday morning --

7 MR. SKURKA: Is it the Court's intention
8 to just not do away with all of Thursday? I don't
9 know how long this thing is going to last.

10 THE COURT: I know, but, you know, when I
11 went -- we went to Carl's thing, it was two hours.

12 MR. SKURKA: I know.

13 THE COURT: If we're starting at -- we're
14 starting at 2 --

15 MR. SKURKA: I'm just wondering if we
16 could squeeze one in from, like, 1 to 2, something
17 like that, because it's not far to get over to the
18 place.

19 THE COURT: Well, I know, but...

20 MR. SKURKA: I'm just thinking out loud,
21 Judge. I'm just kind of figuring if there's some way

22 --

23 THE COURT: I mean, in any event, even if
24 we could do that, we're still going to have to move --

25 MR. SKURKA: No, I understand, Judge.

1 I'm just trying to squeeze in what we can --
 2 THE COURT: Okay. So let's -- let's --
 3 MR. SKURKA: -- if it's possible.
 4 THE COURT: -- we'll bring in the 11:00
 5 person --
 6 MR. SKURKA: At 10:00.
 7 THE COURT: -- yeah, at 10, and then
 8 let's move over -- I guess, we'll move Friday's
 9 people. We'll move everybody over a notch, you know.
 10 Now, do you-all want to try and do ten on
 11 Friday?
 12 MR. GARZA: Heck, yes.
 13 MR. SKURKA: Doesn't matter to me, Judge.
 14 MR. JONES: Next day's Saturday. We can
 15 always sleep late.
 16 MR. GARZA: Actually, Grant wants to work
 17 on Saturday.
 18 MR. SKURKA: How many do we have
 19 scheduled for Friday?
 20 THE COURT: We got this lady, 123, that's
 21 one that we'll catch up. I want to eventually catch
 22 up, so we don't have to keep doing this. We can try
 23 and do one -- one extra one on Friday.
 24 MR. JONES: We may get lucky and have
 25 somebody disqualify.

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1 THE COURT: And then we'll try to squeeze
 2 in one extra person on Friday. But what's going to
 3 have to happen is, you're going to have to just bump
 4 everybody, just one -- one notch down the line, one
 5 notch down the line, until we catch up, and then let's
 6 try and to do ten a day, instead of nine --
 7 COURT COORDINATOR: The one extra on
 8 Friday, you want the extra in the morning or in the
 9 afternoon?
 10 THE COURT: Well, we're probably going to
 11 --
 12 MR. SKURKA: I would think in the
 13 afternoon.
 14 THE COURT: Yeah, because we've already
 15 got -- we've already got an 11:00 coming in.
 16 THE COURT COORDINATOR: So 1:30 or 3?
 17 MR. SKURKA: Or we could come in at 1:00
 18 Friday instead of 1:30.
 19 MR. SCHIMMEL: We wouldn't necessarily
 20 have to finish at 6. We could -- I know it's
 21 horrible, we could finish at 7 or 8 or...
 22 THE COURT: Well, I've got a wedding at
 23 7, and then, --
 24 MR. SKURKA: Or maybe Friday --
 25 THE COURT: Friday night, I do have -- I

1 do have -- we do have something we need to get to,
 2 Gene's thing.
 3 MR. SKURKA: Was there any way we can
 4 start at 1:00 on Friday?
 5 THE COURT: Well, let's -- let's just --
 6 we'll see how it goes. We'll just hit it hard.
 7 MR. SKURKA: Because some of these
 8 people, you never know, they made be through in 20
 9 minutes.
 10 THE COURT: Yeah, like, that first guy.
 11 Okay. Let's bring them in in the
 12 afternoon. I guess, bring in that person at 1:00 on
 13 Friday.
 14 COURT COORDINATOR: Okay.
 15 THE COURT: Okay? Just keep us apprised.
 16 COURT COORDINATOR: So --
 17 MR. SKURKA: So, Ann, looking at my
 18 notes, 48 will come in on Friday at what time, 1 or
 19 1:30?
 20 COURT COORDINATOR: 1.
 21 MR. SKURKA: Okay, 48 is now moved to
 22 1:00 Friday. I have my own little schedule, here.
 23 That's why I'm just trying to keep it straight.
 24 THE COURT: All right. That's what we'll
 25 do. We'll do the best we can. All right, Ed.

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1 MR. GARZA: Your Honor, my specific
 2 objections and reason to challenge this particular
 3 juror for cause is under Article 35.16(a)(10) of the
 4 Code of Criminal Procedure, which has to do with
 5 whether or not we've properly ascertained whether or
 6 not this juror has formed an opinion or conclusion
 7 that would influence his eventual verdict. Under the
 8 totality of the circumstances, Your Honor, based on
 9 his responses, I believe he should be discharged.
 10 Also, I'd make the same similar objection
 11 under 35.16(b) -- I'm sorry, (c)(2), which are the
 12 challenges for cause that the Defense may be allowed
 13 to make for those same similar reasons.
 14 THE COURT: All right. Well, at this
 15 time, it's denied. You may get there.
 16 MR. GARZA: I'd ask the Court, then, to
 17 make some further inquiries --
 18 THE COURT: I will. Oh, I will.
 19 MR. GARZA: -- for purposes.
 20 THE COURT: I'm going to, I'm going to.
 21 MR. GARZA: And note our exception.
 22 THE COURT: Okay. Bring him back in.
 23 I'm going to.
 24 (Venireperson enters courtroom.)
 25

1 VOIR DIRE EXAMINATION

2 BY THE COURT:

3 Q. All right, Mr. Castaneda.

4 A. Yes, sir.

5 Q. You said a little while ago several things.

6 One, you said that you -- you said you felt like maybe
7 he must have done something to be here, there must
8 be -- I guess, here's the thing. --

9 A. Okay.

10 Q. -- I need to know if because he's been
11 charged by the State, okay, that you're already
12 thinking he's guilty.

13 A. No, sir.

14 Q. Okay, because -- because when Mr. Garza
15 asked you about the presumption of innocence, you
16 said -- you know, you sort of indicated, "Well, you
17 know, I think he may be guilty."

18 A. Well, what I -- I didn't understand
19 presumption, so I was assuming you were asking me he's
20 here for a reason. That's why I said, "Yes, he's here
21 because he's been charged with a --"

22 Q. Okay.

23 A. -- is what I'm -- I didn't understand --

24 Q. You didn't understand the question?

25 A. -- the word. And I assumed --

1 A. Well, that's -- that's -- see, the -- I'm

2 misunderstanding the whole question. Okay, he's here
3 because, apparently, he was charged with a -- the
4 crime --

5 Q. Well, that is true, but, you know, maybe --

6 A. -- and --

7 Q. -- It wasn't even him. Maybe it was somebody
8 else.

9 A. Else. Right.

10 Q. Okay?

11 A. And, now, by saying is he guilty, I can't say
12 he's guilty until I read the -- or see the evidence.
13 I mean, he's not -- he's guilty, is what I'm saying,
14 because he's not -- he hasn't presented -- or they
15 haven't presented him guilty.

16 Q. Okay. Well, you know, a lot of times when --
17 when we're doing a criminal voir dire, you'll have one
18 of the attorneys ask the panel and they'll say, "As he
19 sits here right now, is my client guilty or not
20 guilty," and then people say, "Well, I can't tell."
21 You know, the answer to the question is, "Well, he's
22 not guilty because he's not guilty until they --"

23 A. Until they prove.

24 Q. "-- they can prove it."

25 A. Exactly.

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1 Q. You didn't --

2 A. -- I tried to answer it as honest as
3 possible.

4 Q. Okay. So you didn't understand what the --

5 A. The question.

6 Q. -- the question. Okay. Presumption.

7 A. And next time I don't understand something I
8 better ask because I don't want to say something and,
9 you know, be wrong.

10 Q. That's fine, that's fine. But, I mean,
11 here's the deal: We don't want -- you know, we don't
12 want you -- jurors that are going to say, "Hey, he's
13 already guilty." That's not how our system works.

14 A. No.

15 Q. And if that's you, that's okay. I don't -- I
16 want you to tell us how you feel, okay?

17 A. Okay.

18 Q. But, you know, I think it would be a sad
19 state of affairs if just because the State said you
20 did it that, you know, it would be true.

21 A. Right.

22 Q. Okay? And that's why we have jurors. But
23 some people think -- you know, some jurors come in and
24 they say, "Well, you know, he must have done something
25 or he wouldn't be here." Is that you?

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1 Q. Okay? They don't get to just -- they don't
2 get to just say he did it and then it's true.

3 A. Right.

4 Q. Okay?

5 A. Right.

6 Q. Because this is a government of the people,
7 not of the State.

8 A. Right.

9 Q. The power of the government comes from the
10 people, it doesn't come from me, the Judge, it doesn't
11 come from the prosecutor over there, it comes from the
12 jury.

13 A. Right.

14 Q. And, ultimately, you know, sometimes people
15 think, "Man, this jury service is a big hassle." You
16 know, it may be, but I submit to you that that is a
17 power that people still have, okay, and it's very
18 important that people serve on juries.

19 A. Right.

20 Q. And I think you agree with that.

21 A. Yes, sir.

22 Q. What we need to know, though, is are you --
23 are you -- because he's been charged, are you -- are
24 you already thinking he may have done something, are
25 you already thinking that maybe he's guilty?

1 A. No, sir.
 2 THE COURT: Okay.
 3 VENIREPERSON NO. 22: No, I don't.
 4 THE COURT: Mr. Garza, you can continue.
 5 MR. GARZA: Thank you, Your Honor.
 6 VOIR DIRE EXAMINATION
 / BY MR. GARZA:
 8 Q. Is it any clearer in your mind, now that
 9 we've --
 10 A. Yes, sir.
 11 Q. -- tried to explain these matters is what I'm
 12 trying to get at --
 13 A. Yes, sir.
 14 Q. -- as to whether or not you understand the
 15 presumption of innocence?
 16 A. Yes, sir.
 17 Q. Okay. Let me ask you one more time. In your
 18 opinion, sir, do you think my client is guilty or
 19 innocent?
 20 A. Innocent.
 21 Q. Okay. Do you understand why now?
 22 A. Yes, sir. I should have asked when I didn't
 23 know the question, and I would have been more -- more
 24 --
 25 Q. You see, in our system, that's just the way

1 Q. -- of the law and the charge set out in the
 2 indictment in this case --
 3 A. Correct.
 4 Q. -- which is capital murder, the act of
 5 committing murder while in the course of committing a
 6 robbery, okay?
 7 A. Okay.
 8 Q. Now, if they prove the murder and they don't
 9 prove the robbery, what happens?
 10 A. Well, it's not capital.
 11 Q. Correct. It's not a capital murder, is it?
 12 A. Right. No, sir.
 13 Q. It becomes murder, --
 14 A. Murder. Right.
 15 Q. -- okay, a lesser included offense.
 16 A. Correct.
 17 Q. A lesser offense, okay?
 18 A. Yes, sir.
 19 Q. And then, at that time, you no longer have
 20 the possibility of considering a life or death
 21 sentence.
 22 A. Correct.
 23 Q. You might have to be asked to consider a -- a
 24 term of years in prison, or even if our client is
 25 qualified, the possibility of probation, okay?

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1 it is.
 2 A. Yes, sir, I understand.
 3 Q. That's the way it ought to be.
 4 A. Yes, sir.
 5 Q. That's the way we've fought for for years and
 6 years and years.
 7 A. Yes, sir.
 8 Q. As my client, as he sits here, let's pretend
 9 that he's got a quilt around him and that quilt stands
 10 for innocence. Now, it doesn't mean that they won't
 11 come along and try to strip him of that quilt, you
 12 know, because that's their job, they may try to do
 13 that.
 14 A. Right.
 15 Q. They may, they may not.
 16 A. Right.
 17 Q. They may just strip part of it away, not all
 18 of it.
 19 A. Correct.
 20 Q. And then we're going to be stuck with some
 21 legal issues about, "Well, what have they proved, what
 22 have they not proved," but it's their responsibility
 23 to prove beyond a reasonable doubt each and every
 24 element --
 25 A. Yes.

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1 A. Okay.
 2 Q. Could you do that?
 3 A. Yes, sir.
 4 Q. You could consider that?
 5 A. Yes, sir.
 6 Q. The whole range of punishment?
 7 A. Yes, sir.
 8 Q. Okay. And you can consider life or death if
 9 --
 10 A. It goes to that.
 11 Q. -- the government does prove it --
 12 A. Correct.
 13 Q. -- one way or the other.
 14 A. That's true.
 15 Q. This idea or this concept of mitigating
 16 circumstances, aggravating circumstances, I think,
 17 you've already stated that that's a fair way to
 18 achieve some sort of a decision.
 19 A. Yes, sir.
 20 Q. Okay?
 21 A. Yes, sir.
 22 Q. Now, we can't tell you what aggravating
 23 evidence there may be or may not be in this case, or
 24 whatever mitigating evidence there may or may not be
 25 in this case, but are you capable, and what we need to

1 know is, are you -- can you consider and give some
 2 effect to either kind of evidence in making a decision
 3 as to whether our client should live or die?
 4 A. Could I consider it?
 5 Q. Yes, sir.
 6 A. Yes, sir, I can.
 7 Q. What would be, in your mind, some of the
 8 things you'd want to hear about his character and
 9 background?
 10 A. What would I want to hear --
 11 Q. Uh-huh.
 12 A. -- about his character and background?
 13 Q. Yes, sir.
 14 A. The type of person that he is.
 15 Q. Okay. And you would be able to consider
 16 those matters in determining whether or not there is a
 17 sufficient amount of evidence to assist you in making
 18 a decision one way or the other?
 19 A. Correct.
 20 Q. Okay.
 21 A. Yes, sir.
 22 Q. Because, you know, some people might just
 23 come in here and say: Well, you know what, State has
 24 already proven to me that he has committed capital
 25 murder and based on that solely alone, you know, even

1 though I can't predict the future, it has a natural
 2 tendency, would you agree with me, that it might also
 3 let you answer that Special Issue No. 1 that, "Hey, it
 4 sounds to me like, you know, he's capable of
 5 committing other criminal acts of violence that would
 6 constitute a threat to society."
 7 A. You're talking about if he had -- if they
 8 already proved --
 9 Q. Right.
 10 A. -- that he can?
 11 Q. Let's assume that.
 12 A. Yes, sir. Yes, sir.
 13 Q. Right. In other words, the train is rolling
 14 down the track --
 15 A. Correct.
 16 Q. -- at high speed --
 17 A. Right.
 18 Q. -- on an incline, --
 19 A. (Nods head.)
 20 Q. -- okay?
 21 A. Right.
 22 Q. Would you be able to still keep an open mind,
 23 --
 24 A. Yes, sir.
 25 Q. -- until you get to this part?

1 A. Right.
 2 Q. Like Mr. Skurka said, we're leading toward
 3 the death penalty, we're leading to it --
 4 A. Right.
 5 Q. -- and then at the very end, we're going to
 6 ask you, is there something in here that you could
 7 possibly listen to, or would you be one of those kind
 8 of people that says, "Hey, I don't even want him
 9 breathing the air I'm breathing"?
 10 A. Oh, no. No.
 11 Q. Would that be something you would do?
 12 A. No, sir.
 13 Q. Because some people would.
 14 A. No.
 15 Q. And that's okay.
 16 A. Right.
 17 Q. It's all right, okay? Some people feel that
 18 way.
 19 A. Right.
 20 Q. That's all there is to it.
 21 Mr. Castaneda, I just want to make clear
 22 and understand, sir, that even if you answer Special
 23 Issue No. 1 yes, that, in your mind, based on the
 24 evidence proven to you beyond a reasonable doubt, --
 25 A. Right.

1 Q. -- because, see, at this stage, we're at the
 2 punishment stage.
 3 A. Correct.
 4 Q. The State still has the same burden. They
 5 don't have a lesser burden, they still have the high
 6 burden of proving to you beyond a reasonable doubt
 7 that our client would be a continuing threat to
 8 society, okay?
 9 A. Uh-huh.
 10 Q. And if you so -- if you so find, would you be
 11 capable of still maintaining an open mind and get to
 12 listening to the evidence regarding these issues and
 13 Issue No. 2 --
 14 A. Correct.
 15 Q. -- and if you feel that there is sufficient
 16 mitigating circumstances to give him a life sentence,
 17 instead, --
 18 A. Correct. Yes, sir.
 19 Q. -- would you consider that?
 20 A. Yes, sir.
 21 Q. Even after you've already answered yes to
 22 this.
 23 A. Well, answered yes to this to the proven --
 24 Q. Uh-huh.
 25 A. -- with beyond a reasonable doubt.

1 Q. Right.
 2 A. Right.
 3 Q. Okay.
 4 A. But I would consider life -- I mean, consider
 5 life in prison versus the death penalty. Yes, I
 6 would.
 7 Q. If there's sufficient mitigating --
 8 A. Mitigating.
 9 Q. -- circumstances.
 10 A. Exactly.
 11 Q. You could do that?
 12 A. Yes, sir.
 13 Q. Okay, sir. And we can depend on that.
 14 A. That's right.
 15 Q. Is there any reason that you couldn't be fair
 16 to both sides?
 17 A. No.
 18 Q. Is there anything going on in your life right
 19 now, either at work or personal or anything at all
 20 that would serve as any sort of a distraction to you
 21 if you were chosen to be a juror in this case, like,
 22 do you -- I don't believe you've indicated that you
 23 have any vacation plans or --
 24 A. No, sir.
 25 Q. -- anything of that nature.

1 A. No. Actually, I'm retired from Celanese and
 2 I'm working for another contractor, just for something
 3 to do.
 4 Q. Okay.
 5 A. But I wouldn't have no problem.
 6 Q. It's not going to effect you or --
 7 A. No, sir.
 8 Q. -- they're not going to get mad at you?
 9 A. Well, I already asked them that I might have
 10 to take some time off if I was to be chosen --
 11 Q. Okay.
 12 A. -- after I -- you know, took in the excuse,
 13 and they didn't have a problem with it.
 14 Q. Okay. Do you have any questions, at all,
 15 about any of these proceedings here this morning?
 16 A. I don't have a question, but I do want to
 17 apologize for not understanding the question and
 18 assuming --
 19 Q. You don't have to apologize for anything,
 20 sir.
 21 A. Well, I'm one of those that I like -- I like
 22 to be straight, and being that I answered wrong, or
 23 whatever the case may have been, and took you-all's
 24 time, I --
 25 THE COURT: No.

1 MR. GARZA: You don't have to apologize
 2 for any of that, sir.
 3 VENIREPERSON NO. 22: Okay.
 4 MR. JONES: That's what we're here for.
 5 VENIREPERSON NO. 22: Okay.
 6 MR. SKURKA: Don't worry about that.
 7 THE COURT: You didn't inconvenience us,
 8 at all.
 9 MR. GARZA: Thank you, sir. I have no
 10 other questions.
 11 THE COURT: Do you have anything else,
 12 Mr. Skurka?
 13 MR. SKURKA: No. I just want to thank
 14 you, too, Mr. Castaneda, because, you know, some of
 15 these concepts, lawyers are used to them, that's why
 16 we need to talk to you-all and make sure it's all
 17 straight with you-all.
 18 VENIREPERSON NO. 22: Yes, sir.
 19 MR. SKURKA: If you understand
 20 everything, now, that's fine.
 21 VENIREPERSON NO. 22: Okay.
 22 MR. SKURKA: Thanks so much for your
 23 time.
 24 THE COURT: All right, Mr. Castaneda, if
 25 you'd wait in the jury room for just a minute.

1 VENIREPERSON NO. 22: Yes, sir.
 2 (Venireperson exits courtroom.)
 3 THE COURT: All right, Mr. Skurka?
 4 MR. SKURKA: Judge, the State will
 5 accept this juror.
 6 THE COURT: Mr. Garza?
 7 MR. GARZA: Can we confer just a minute,
 8 Judge?
 9 THE COURT: Yeah, absolutely.
 10 (Pause in proceedings.)
 11 THE COURT: All right. Where are we at?
 12 MR. GARZA: We'll take him.
 13 THE COURT: All right. Bring Mr.
 14 Castaneda in and then we'll take a little break.
 15 (Venireperson enters courtroom.)
 16 THE COURT: All right, Mr. Castaneda,
 17 you have been selected to be on this jury. Now, we're
 18 probably going to begin on December 1st, but I would
 19 ask you to not read the local paper.
 20 VENIREPERSON NO. 22: Okay.
 21 THE COURT: And not watch the local news
 22 because we want you to just come to court and get your
 23 information from the courtroom.
 24 VENIREPERSON NO. 22: Yes, sir.
 25 THE COURT: All right?

1 VENIREPERSON NO. 22: Yes, sir.
 2 THE COURT: All right. And don't discuss
 3 this case with anybody, --
 4 VENIREPERSON NO. 22: Okay.
 5 THE COURT: -- all right? Not even your
 6 family. They may ask you -- may ask you about it.
 7 Say, "I can't talk about it."
 8 VENIREPERSON NO. 22: Yes, sir.
 9 THE COURT: All right? Till it's over
 10 with, okay?
 11 VENIREPERSON NO. 22: Yes, sir.
 12 THE COURT: All right. We'll be keeping
 13 in touch.
 14 VENIREPERSON NO. 22: Okay. Thank you.
 15 THE COURT: All right. Let's take a
 16 little break.
 17 (Venireperson exits courtroom.)
 18 (Short recess.)
 19 THE COURT: All right. Let's push on.
 20 Next person?
 21 (Venireperson enters courtroom.)
 22
 23
 24
 25

1 VENIREPERSON NO. 123,
 2 JANA MENARD MALM,
 3 VOIR DIRE EXAMINATION
 4 BY THE COURT:
 5 Q. All right. How are you?
 6 A. Tired.
 7 Q. You're doing okay? All right. Well, you had
 8 -- you are Jana --
 9 A. Malm.
 10 Q. -- Malm? Okay, and you're going out of town
 11 and we've agreed to take you out of order.
 12 A. Uh-huh.
 13 Q. You will be back by December the 1st, I
 14 believe, correct?
 15 A. (Nods head.)
 16 Q. All right.
 17 A. But I do leave, again, on the 17th.
 18 Q. Oh, that will be fine.
 19 A. So...
 20 Q. That -- we can work with that.
 21 A. Okay.
 22 Q. Okay? All right, we're going to talk to you
 23 about a few things. First of all, like I told you the
 24 day everybody came in, we want people that can keep an
 25 open mind and people that can follow the law. If you

1 can't keep an open mind, please let us know, okay? I
 2 guess, that's the first thing. Is there anything that
 3 would keep you from keeping an open mind in this case?
 4 A. I don't -- I guess I don't know what my
 5 options are, as far as --
 6 Q. Well, I mean --
 7 A. -- an open mind, being an open mind.
 8 Q. Well, I mean, some people, you know, they --
 9 they say, "Well, you know what, I -- I think anybody
 10 that's charged is guilty. Can't keep an open mind."
 11 Some people say, "Well, I've heard too much about the
 12 facts of the case in the news and I've already formed
 13 an opinion. I can't keep an open mind."
 14 A. Uh-huh.
 15 Q. And other people say, "You know, no, I can
 16 keep an open mind. I can sit and listen to the
 17 evidence and -- and make a decision based upon the
 18 evidence and the law in this case." And if that's
 19 you, then, I guess --
 20 A. Well --
 21 Q. -- we need to know either way.
 22 A. -- I think I can. But, initially, my -- my
 23 mind is that, you know, it -- it's kind -- there's a
 24 prejudice there, there's a bias there, you know, very
 25 -- you know, at the beginning. Until you hear the

1 facts, you kind of form an opinion, but I'm willing to
 2 listen to the facts, for sure, because -- but, you
 3 know, like everybody, you hear something -- I mean, I
 4 have never heard of this case, except --
 5 Q. Okay.
 6 A. -- when they brought -- you brought us in.
 7 Q. Okay. So you -- okay. All right, well,
 8 then, let's talk about some things.
 9 First of all, this is a criminal case.
 10 Let's see here, you haven't been a juror before.
 11 A. Nuh-uh.
 12 Q. You understand that in a criminal case it's
 13 the State's burden of proof.
 14 A. Uh-huh.
 15 Q. All right? They have to prove -- when they
 16 bring the charges, they have to prove the charges,
 17 okay? They don't -- they don't just get to say,
 18 "Well, you know, we allege this, and, therefore, it's
 19 true," okay? You agree with that, --
 20 A. Sure.
 21 Q. -- that the State should be -- should be
 22 required to prove the evidence?
 23 A. Yes.
 24 Q. Okay. Now, and -- and the burden of proof is
 25 beyond a reasonable doubt. And we don't have a

1 definition of that, but it's the highest burden that
2 we have in the law, okay? And, you know, the -- you
3 know, that's -- that's not beyond all doubt, it's not
4 beyond a shadow of a doubt, but it is a high standard.
5 Would you -- could -- could you follow that law and
6 hold the State to that high standard?

7 A. (Nods head.)

8 Q. Yes?

9 A. Yes.

10 Q. Okay. And I'm -- I see your nod, but she's
11 taking it down --

12 A. I'll speak.

13 Q. Okay. Okay. Now, because the State has the
14 burden of proof, the law says "Defendant, and
15 everybody, is presumed to be innocent until proven
16 otherwise." In other words, "You brought the charges.
17 That's fine, you got to prove them, but until you do,
18 if you can, this Defendant is presumed to be
19 innocent," and you must presume him to be innocent.

20 Do you -- do you have a problem with
21 that, or -- I mean, if do you, please, let us know.

22 A. Well, I mean, none of the facts have been
23 presented, but assuming he's the person that, you
24 know, had the knife, or whatever, and came in and with
25 intent to rob, which is what you guys told us, that

1 something."

2 So, in my mind, I truly -- I say, "Well,
3 it's probably, it's probably true," but maybe not. I
4 mean, if I hear everything, it may -- it may change my
5 mind. It may --

6 Q. I may --

7 A. -- make me think --

8 Q. Okay. You're saying if you hear evidence it
9 may change your mind about the --

10 A. My feelings.

11 Q. -- bias that you already have?

12 A. Right.

13 Q. Okay.

14 MR. JONES: We have a motion.

15 THE COURT: Well, you know, what, I'm
16 going to go ahead and turn the floor over to Mr.
17 Skurka and we'll see where we get.

18 VOIR DIRE EXAMINATION

19 BY MR. SKURKA:

20 Q. Hello, ma'am.

21 A. Yes.

22 Q. We have a few questions to ask you. And
23 we're going to have to pin you down on this, okay?

24 A. Okay.

25 Q. And there's no right or wrong answers, but we

1 that was the accusation, or whatever, it's very --
2 it's hard to -- I mean, I would listen, definitely
3 listen to the -- to the thing, and I think I would be
4 objective, but, initially, when I first hear, I think,
5 "Oh, well, you know, that may have happened. It
6 probably happened," you know, who knows, but I would
7 be objective. I think I would be objective.

8 Q. But you said something at the beginning of
9 your -- of that statement. You said, "assuming he was
10 the one with the knife," and there's --

11 A. Yeah.

12 Q. -- I mean, there's -- I mean, there's --

13 A. I mean --

14 Q. Why would you assume such?

15 A. Well, you can't, until you hear the evidence.

16 Q. Right.

17 A. So, I mean, I don't know why he -- how he was
18 arrested or how it came to be that, you know, they
19 picked him up, and, you know, took him in and -- and
20 indicted and all that, but there -- you know, there's
21 something there that causes people to believe he may
22 be the one that did this. So I don't know. I don't
23 know all the evidence, so -- but, you know, initially,
24 my thought is, "Well, if there was enough evidence to
25 bring him in, and all that, then they must have

1 just want to --

2 A. Okay.

3 Q. -- make it clear. The law says this, if
4 you've already reached in your mind a conclusion based
5 on what you've heard, either through hearsay or
6 whatever, media or whatever, that you've already made
7 the decision as to his innocence or guilt right now,
8 you cannot serve on this jury.

9 A. Right.

10 Q. So my question is, have you reached in your
11 mind, have you already formed an opinion as to whether
12 he's guilty or not, based on stuff you've heard about?

13 A. Well, I haven't really heard anything about
14 the case, at all, except for what you guys told us the
15 first time we came in for jury duty.

16 Q. Okay.

17 A. So...

18 Q. So you don't have any preconceived notions.

19 A. I don't. No, I just, you know, just -- I
20 guess, any -- it -- it's just -- it's one of those
21 things you -- it's hard to go into something with just
22 a total clean slate. But, yeah, I think I can once I
23 start hearing everything.

24 Q. Okay. Again, so do you have any preconceived
25 notion or have you formed an opinion of whether he's

1 guilty or not, yes or no?

2 A. Well, I -- it's hard to say, because I -- I
3 guess I have. I guess I have in my mind but I'm
4 willing to open my mind to listen and hear everything,
5 but that's not what you wanted me to say.

6 MR. SKURKA: I'm not trying to tell you
7 what to say.

8 THE COURT: No, no, no. Let me tell you
9 something, let me tell you something, you tell us
10 exactly how it is. Don't -- don't -- don't think it's
11 going to hurt his feelings or his feelings or my
12 feelings. We want to know how you feel. There are no
13 wrong answers here.

14 VENIREPERSON NO. 123: Uh-huh.

15 THE COURT: None, okay? You tell it like
16 it is and we're not disappointed or, you know, you
17 don't answer the question the way you want any of us
18 to -- to answer it. You answer it the way you want to
19 answer it.

20 VENIREPERSON NO. 123: Yeah.

21 THE COURT: And if that means you've
22 already, you know, honestly, formed an opinion, that's
23 okay, but we --

24 VENIREPERSON NO. 123: Well, I have -- I
25 have feelings. I'm not sure it's an actual flat

1 Q. -- you haven't heard anything about the case.

2 A. When I picture -- when they told us what it
3 was and that it was a robbery, and there was a knife
4 and then a murder, I can picture something in my mind
5 -- maybe too many movies or something but -- so, in
6 that way, you can kind of form an opinion, just by
7 your mind making the pictures, you know? But, you
8 know, he's not the person in my picture. You see what
9 I'm saying? I don't --

10 Q. Have you ever heard on -- on stuff on news --
11 in the news where a person is charged with a crime --

12 A. Uh-huh.

13 Q. -- and then later on --

14 A. Yes, sir.

15 Q. -- they're found not guilty?

16 A. I know of someone like that.

17 Q. It -- it's happened before.

18 A. Uh-huh, yes.

19 Q. And so would it be right to say that it's not
20 fair --

21 A. Correct.

22 Q. -- to assume they're guilty just because
23 they're been charged with a crime?

24 A. That's right.

25 Q. Have you ever gotten a traffic ticket in your

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1 opinion that I couldn't change. You see what I'm
2 saying?

3 Q. (BY MR. SKURKA) Well, the law says this,
4 right now you have to presume that this person is
5 innocent --

6 A. Uh-huh.

7 Q. -- right now.

8 A. Uh-huh.

9 Q. And that's because we call that "the
10 presumption of innocence." Everybody starts out that
11 the State has to prove the case beyond a reasonable
12 doubt. If you, God forbid, were charged with a crime
13 wouldn't you want to think that --

14 A. Right.

15 Q. -- you're innocent and that they have to
16 prove that you're guilty?

17 A. Right.

18 Q. So can you afford him that same feeling?

19 A. Yes, I think, I can.

20 Q. Okay. That's good enough. And -- and when
21 you say you've reached -- you think you've your mind,
22 I'm still lost, because you say --

23 A. Well --

24 Q. -- you have a --

25 A. -- when I picture this --

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1 life?

2 A. Uh-huh, yes.

3 Q. And sometimes people get this traffic ticket
4 and it's charging them with, like, running a red light
5 or speeding.

6 A. Right.

7 Q. And then some people say, "I don't care if I
8 got a ticket, that cop was wrong. There was no stop
9 sign at the intersection or it was a green light that
10 I went through," and so they go to court --

11 A. Right.

12 Q. -- to fight it.

13 A. Uh-huh.

14 Q. The same kind of principle. Just because
15 Mr. Ramirez is charged with capital murder does not
16 mean he's guilty, just like when a police officer
17 writes you a ticket. The police officer writing you a
18 ticket just says you're charged with running a red
19 light.

20 A. Uh-huh.

21 Q. You can either plead guilty or not guilty,
22 and you go to a court and let the court or a jury
23 decide if you're guilty or not. So, if I went up to
24 you and I said -- if you came up to me and said,
25 "Gosh, Mark, the other day I got a traffic ticket

1 running a red light," and I would go back here and I'd
 2 say, "Oh, you're already guilty, you're already
 3 guilty," that wouldn't be fair --
 4 A. Right.
 5 Q. -- of me to do that, right?
 6 A. Right. I understand.
 7 Q. What would happen is I would have to presume
 8 you're innocent, unless you even said you're -- unless
 9 you -- you confessed or you admitted your guilt, or
 10 somebody proved that you were guilty. And that's what
 11 our concepts of law are. So that's what I'm trying to
 12 figure out, how you -- I can't understand if you've
 13 really reached a decision or not.
 14 A. I guess I haven't.
 15 Q. Okay.
 16 A. Yes.
 17 Q. Then why did you -- why did you tell the
 18 Judge that -- that you think you may have, because
 19 you've seen movies or T.V. shows or something?
 20 Because I have in your questionnaire, it says, "Just
 21 because someone is charged with capital murder they're
 22 probably guilty." And you put, "Disagree."
 23 A. Right.
 24 Q. Is that how you feel?
 25 A. Yes.

1 Q. It says, "What one reads in the newspaper and
 2 one sees on T.V. is a better source of information
 3 than testimony heard in the courtroom," and you put,
 4 "Disagree."
 5 A. Right.
 6 Q. Which makes it sound to me like you've been
 7 there -- you know that a jury hears everything, where
 8 the people in the media may not hear everything.
 9 A. Yes.
 10 Q. And then you put, "Based on what you know or
 11 heard about the case, have you already formed a
 12 conclusive opinion about the guilt or innocence of
 13 John Henry Ramirez or what his punishment should be,"
 14 and you put, "No."
 15 A. No. Well, that "conclusive" makes a big
 16 difference because there's some feelings, like I said
 17 I had, just thinking about, "Oh, you know, something
 18 happened. Someone was killed," you know, that -- but,
 19 yeah, I do, yeah, I -- that was a true statement, yes.
 20 Q. Okay. And -- and you understand it's -- it's
 21 a natural inclination to think that because you heard
 22 something on T.V. or the news, well, such and such was
 23 accused of stealing something, it's probably a natural
 24 inclination, without knowing anything else, to think,
 25 "Well, gosh, you know, maybe he did do it."

1 A. Right, that's what I'm saying.
 2 Q. Okay. But -- but you understand, if you're
 3 sitting on this jury, you can't say, "Well, maybe he
 4 did it." You have to say, "He's innocent. And until
 5 the State proves that he's guilty, I can't say he
 6 maybe have done it."
 7 A. Yes.
 8 Q. Does that make sense to you?
 9 A. Yes.
 10 Q. Can you follow that?
 11 A. Yes.
 12 MR. SKURKA: Okay. Judge, did you want
 13 to do anymore questions, or --
 14 THE COURT: No. I'm --
 15 MR. SKURKA: -- do you want me to go
 16 ahead and continue?
 17 THE COURT: No, you go ahead and
 18 continue.
 19 MR. SKURKA: Thank you.
 20 Q. (BY MR. SKURKA) Okay. Now, let's switch
 21 gears a little bit. Because from what you're telling
 22 me -- what you just told me is you think you can be
 23 open-minded and you haven't made a decision, right?
 24 A. Yes.
 25 Q. Okay. Now, let's go to some -- to the next

1 things. The death penalty is one of the big issues in
 2 this case, and I'm going to ask you, straight out, how
 3 do you feel about it?
 4 A. I believe in it.
 5 Q. Why?
 6 A. Well, I'm -- I guess, I'm got a very strong
 7 Judeo-Christian background, and I believe in a lot of
 8 that teaching, that, you know, that -- I don't believe
 9 that if someone is truly guilty of murder and it is,
 10 you know, is -- you know, I guess, enough time to, you
 11 know, appeal or whatever, in case it was a wrong -- a
 12 wrong decision, I believe that -- that death penalty
 13 is -- is just.
 14 Q. Okay. And have you always felt that way?
 15 A. For a long time, uh-huh.
 16 Q. Okay. How do you feel about you being
 17 responsible for that decision?
 18 A. Well --
 19 Q. I don't mean just you, but you and the jury.
 20 A. Right, and a jury. Yeah, I think -- I think
 21 I could do it. I mean...
 22 Q. Because sometimes people say, "Oh, I saw that
 23 on the news. He's a bad guy. You know, he should get
 24 the death penalty," and people say, "I'm for the death
 25 penalty, Mr. Skurka, I'm for it," and then when I put

1 them in the box and say, "Okay. That's him. Look at
2 him right there. That's John Henry Ramirez. It's not
3 somebody you read about the paper or see on the news,
4 that's him," I want you to look at him and tell me,
5 can you go ahead and follow through with that if you
6 think that the evidence warrants that he should get
7 the death penalty?

8 A. I think I could.

9 Q. Okay.

10 A. I think I could. I don't like the idea of
11 having to do that, but I feel like that's just if it
12 merits -- if the evidence --

13 Q. Based on the evidence, right?

14 A. Uh-huh.

15 Q. Okay. The reason I ask is because sometimes
16 the jury comes in -- remember that first day we had 2-
17 or 300 people in the room --

18 A. Uh-huh.

19 Q. -- and the Judge came down and said, "This is
20 a capital murder case, folks. You may have to decide
21 whether somebody lives or dies --"

22 A. Right.

23 Q. -- and I saw some people out there going, "Oh
24 my gosh, like, oh, I can't do that," and other people
25 said, "Oh, my gosh, there's no way I could do this

1 kind of case. Give me a D.W.I. case or a burglary
2 case. Don't give me a capital murder case --"

3 A. Yeah.

4 Q. -- did you feel that way?

5 A. It was a scary thought. It was an awesome
6 responsibility.

7 Q. And it should be thought of as an awesome
8 responsibility, but the question is, can you follow
9 through it if the law allows for it and the evidence
10 shows that you could?

11 A. I think I can --

12 Q. In other words --

13 A. -- if I had to.

14 Q. And I understand, but sometimes people can
15 walk the walk -- how do you say that?

16 A. Talk the talk.

17 Q. Talk the talk, but they can't walk the walk.
18 They're for the death penalty, but they just don't
19 want to be put in that position.

20 A. Yeah.

21 Q. How do you feel about being put in that
22 position?

23 A. Well, if it were only me making the decision,
24 it would be harder, but if there were 12 of us, I
25 think I -- I could do it.

1 Q. And that's why the law is set up that -- as
2 powerful as a Judge, like Judge Galvan is, and the
3 district attorney, they can't just -- the government
4 can't just say, "Hey, this guy gets the death penalty,
5 this guy doesn't get the death penalty." We have it
6 in Texas to have 12 people make that decision. You
7 think that's a good law to have it that way?

8 A. Seems to be one of the -- you know, I don't
9 know any other one that would be better, necessarily,
10 so I guess so.

11 Q. So you think you could participate in that
12 kind of decision if called upon to?

13 A. I think I could if I had to, yes. I don't
14 want to, but...

15 Q. And I'll tell you the honest truth, nobody
16 wants to be able to have to make that decision. But,
17 you know, some people say, "Well, it's my civic
18 responsibility to, you know, carry out the law, if the
19 law provides for that."

20 Now, we talked about your trips a little
21 bit, but you say they won't interfere with your --

22 A. I have to go --

23 Q. -- service here.

24 A. -- on the 17th. And if it's more than two
25 weeks, that would cut into it.

1 Q. It won't be more than two weeks, we're almost
2 positive of that. And where do you have to go on
3 these trips, anyway?

4 A. Well --

5 Q. Is this for your --

6 A. -- today -- yeah, part of it is. The one --
7 the one in -- next month is. And then this month it's
8 actually where my husband's a pastor of a church, and
9 we're taking a team to Israel and the Middle East.

10 Q. What church is he a pastor to?

11 A. The Summit Church.

12 Q. Where is that located?

13 A. On Staples.

14 Q. Where on Staples? Staples is such a long
15 street --

16 A. Yeah.

17 Q. -- I'm trying to figure out where it is.

18 A. It's close to the Mall and to King High
19 School.

20 Q. Okay. How about you-all's religion, is there
21 anything about the death penalty in your teachings,
22 like for it or against it?

23 A. Well, I mean, my husband doesn't teach on it
24 or anything. It's just in the Bible that, you know,
25 that they didn't keep people incarcerated, you know,

1 forever and ever and ever, you know, for the death
 2 penalty. It was -- it was, you know -- it was --
 3 Q. Carried out fast.
 4 A. -- carried out, yeah.
 5 Q. Now, the law here in Texas and most states
 6 are just because a person is convicted of capital
 7 murder, they're not led outside to the gallows, you
 8 know --
 9 A. Right.
 10 Q. -- or executed right there, we have the
 11 appellate process. And sometimes that runs slow,
 12 sometimes it goes faster. But generally speaking,
 13 everybody's careful not to rush into things, and give
 14 the Defendant an opportunity to have his lawyer to
 15 look at the case and review it and see if there's any
 16 mistakes made, and that -- actually, you have the
 17 appellate process of appeals, whether you're convicted
 18 of D.W.I. or capital murder. That's for every case.
 19 But I think a lot of times people say it
 20 takes too long for capital murder cases, but then the
 21 question is how much is too long? You don't want to
 22 rush into things, either. Does that affect you in
 23 anyway sitting on this jury?
 24 A. What do you mean, the -- the fact that it
 25 would take too long to?

1 Q. If he was -- yeah, some people say, "Well,
 2 yeah, it takes too long for the appellate process to
 3 go through, for it to be carried out."
 4 A. I really don't -- I don't know. I don't know
 5 about the length or any of that.
 6 Q. You don't have any independent knowledge of
 7 how long it takes for an appeal to go through?
 8 A. No. I guess I don't.
 9 Q. How about the situation with your mom? You
 10 said that you're the primary caregiver for your mom.
 11 A. Well, she's in an assisted living, but I have
 12 to provide for her bathing and her meds every day, and
 13 all the things I help her with because she's -- has
 14 memory problems and she can't -- I need to tend to her
 15 every day, at least once.
 16 Q. Is that going to interfere with you being on
 17 the jury?
 18 A. It would stress me, I think.
 19 Q. I think the Judge probably told you that our
 20 schedule is like 8:30, take a break at 10 or so,
 21 midmorning, then we have an hour and a half for lunch.
 22 And then, we usually start at 1:30, and then maybe a
 23 midafternoon break. And, generally-speaking, we don't
 24 work past 5. I mean, it may carry over a few minutes,
 25 but not -- it's not going to be till like 6 or 7:00 at

1 night, every night.
 2 A. Yeah.
 3 Q. Is that a schedule that's workable for you or
 4 not?
 5 A. Well, as far as my mom's concerned it is, but
 6 with my other commitments, it's not.
 7 Q. What do you mean your other commitments?
 8 A. Well, I'm a pastor's wife and I have meetings
 9 during the week with ladies, and things, so -- I mean,
 10 that would have to, I guess, be canceled. But
 11 that's -- I mean, there are things that I -- I'm busy
 12 with, so, yeah, that would definitely make a change in
 13 my life if it were two weeks -- a two-week trial.
 14 Q. Is it a prob -- is it such a change in your
 15 life that would make you hard -- be hard for you to
 16 focus on this case?
 17 A. I think it might, actually.
 18 Q. Okay. Well, with -- like I said, there's no
 19 right or wrong answers.
 20 A. Uh-huh.
 21 Q. Obviously, both the Defense and us -- and the
 22 State want you to be able to --
 23 A. Be there when I'm here --
 24 Q. -- be there and be there 100 percent --
 25 A. -- mentally.

1 Q. -- instead of worrying about it. We had a
 2 guy the other day that said, "Look, I'm already
 3 thinking about a meeting I have to go to today --"
 4 A. Yeah.
 5 Q. -- and he said, "I might be distracted." Do
 6 you think that might be your situation?
 7 A. I am very easily distracted. Yes, I think it
 8 could.
 9 Q. You're very what?
 10 A. I'm easily distracted. I'm -- I think I have
 11 something that hasn't been diagnosed yet, or
 12 something.
 13 Q. You have a lot of -- you have a -- it sounds
 14 like you have a lot going on, that you could be
 15 distracted; --
 16 A. Yeah.
 17 Q. -- is that right?
 18 A. Yes.
 19 MR. SKURKA: Okay. Judge, I don't have
 20 any other questions.
 21 MR. JONES: I have a motion before we --
 22 I begin.
 23 THE COURT: All right. Can you wait in
 24 the jury room, please.
 25 VENIREPERSON NO. 123: Sure.

1 (Venireperson exits courtroom)
 2 MR. JONES: I challenge this juror for
 3 cause for a two reasons: The totality of her answers,
 4 I don't believe that she presumes the Defendant to be
 5 not guilty. She has a notion or a feeling that he is
 6 guilty and will look at the trial as a -- simply as a
 7 process of confirming what she already believes,
 8 rather than having an open mind about what happened in
 9 the first place and -- and does it show that the
 10 Defendant committed a crime.
 11 MR. SKURKA: Judge --
 12 MR. JONES: No, let me finish. No. 2 --
 13 MR. SKURKA: No, I'm just going to
 14 agree.
 15 MR. JONES: Oh, you agree? Okay. Then I
 16 need go no further.
 17 THE COURT: I agree. This -- this
 18 witness -- this potential juror, unlike the other one,
 19 I really thought the other juror that we -- we
 20 accepted, Juror No. 2, really misunderstood Mr.
 21 Garza's question.
 22 MR. JONES: Yeah, we -- he came around to
 23 it.
 24 MR. GARZA: And then we went off and
 25 picked him, so now we've waived that objection.

1 THE COURT: Well --
 2 MR. JONES: No, no. I agreed with that.
 3 THE COURT: -- no, but not only that, but
 4 I honestly believe that he misunderstood the question.
 5 MR. GARZA: Yes, he did.
 6 THE COURT: And I think he can be fair.
 7 I think this lady, I agree with you, I think it's
 8 different. And it's less than what she said and more
 9 of the impression that I got the way she said it,
 10 quite frankly, so I'm going to sustain the challenge
 11 for cause.
 12 MR. SKURKA: Well, I would -- it's an
 13 agreement, Judge. I agree.
 14 THE COURT: Okay.
 15 MR. SKURKA: I wasn't trying to interrupt
 16 you, Mr. Jones, --
 17 MR. JONES: That's all right.
 18 MR. SKURKA: -- I was just trying to make
 19 a deal.
 20 MR. JONES: That's fine. Good. Thank
 21 you.
 22 MR. GARZA: We find you generally rude,
 23 though.
 24 (Venireperson enters courtroom.)
 25 THE COURT: All right. Ms. Malm,

1 you're not -- you're not going to be seated on this
 2 jury, but we do really appreciate you coming down
 3 here, and we appreciate your candid answers to the
 4 questions that we posed.
 5 Thank you very much.
 6 VENIREPERSON NO. 123: Thank you.
 7 (Venireperson exits courtroom.)
 8 THE COURT: All right. Let's take a
 9 little...
 10 MR. JONES: I'm just standing up to
 11 stretch.
 12 THE COURT: Okay. All right.
 13 (Brief pause in proceedings.)
 14 (Venireperson enters courtroom.)
 15 THE COURT: Come on up and have a seat up
 16 here in the chair.
 17
 18 VENIREPERSON NO. 23,
 19 JEREMY JOHN CALBAT,
 20 VOIR DIRE EXAMINATION
 21 BY THE COURT:
 22 Q. All right. You are Jeremy Calbat; is that
 23 correct?
 24 A. Yes, sir.
 25 Q. All right. Now, Mr. Calbat, we're going to

1 ask you some questions here today. You've already
 2 filled out a questionnaire so we do know something
 3 about you. But, you know, pretty much straight-up,
 4 we're ask -- we're looking for people that can keep,
 5 one, an open mind, okay, and people that can follow
 6 the law, all right? And we're going to talk a little
 7 bit about the law, but let's talk first about whether
 8 you can keep an open mind, okay?
 9 Are you somebody that you think can keep
 10 an open mind in this case?
 11 A. I feel like I do.
 12 Q. Okay. All right. You have never been on a
 13 jury before; is that right?
 14 A. That's correct.
 15 Q. Okay. Well, let's talk about some things.
 16 You probably know some of these things, even though
 17 you haven't been on a jury before, but we're going to
 18 talk about them. First of all, the State's brought
 19 these charges and they're capital murder charges, and
 20 obviously they're serious, okay? They brought them.
 21 And as part of that, the law says, "State, you bring
 22 charges, you got to prove them, okay? You bring them,
 23 you got to prove them." You agree with that?
 24 A. Yes, sir.
 25 Q. Okay. I mean, that's the law, they have to

1 prove it. Defense doesn't have to prove anything,
2 okay, because they -- they're the accused. But
3 State's brought them, they got to prove it, okay?
4 As part of that, the burden of proof is
5 beyond a reasonable doubt. Now, we don't have a
6 definition for what that is, but it is the highest
7 burden that we have in all of the law, not just
8 criminal law, all of the law, okay? It is not beyond
9 all doubt, it is not beyond a shadow of a doubt. It's
10 just what it says, it's beyond a reasonable doubt, and
11 that's the burden that the State has. Would you --
12 the law says that you have to hold them to that
13 burden. Could you follow that law?

14 A. Yes, sir.

15 Q. Could you hold them to that burden?

16 A. Yes, Judge.

17 Q. All right. Now, as part of them having the
18 burden of proof, the law says, "All right, State, you
19 brought charges, you got to prove them beyond a
20 reasonable doubt. And until you do, if you can at
21 all, Defendant is presumed to be innocent," all right?
22 Ancient concept. We got it from the -- from the
23 English, who got it from the Romans, who got it from
24 the Greeks. Nothing new. That's what the law says.
25 Defendant is presumed to be innocent

1 and say, "Yeah, I'm not sure about the State's case,
2 but he didn't testify, so I'm going to put -- I'm
3 going to put that mark over here for the State, that
4 -- that hurts their side, that helps his side." You
5 can't do that.

6 I need to know from you, would you hold
7 it against Defendant if he chose not to testify?

8 A. No, sir.

9 Q. Okay. Now, let's talk a little bit about the
10 charge itself. This charge is capital murder. What
11 is capital murder? I like to think of capital murder
12 as murder plus, okay? It's murder plus something
13 else. And there's a laundry list that the legislature
14 has said that -- that are murders that can become
15 capital murders. And there's different things, but in
16 this case the State is alleging that the Defendant
17 committed a murder, that is, the intentional taking of
18 another's life, on the given day in Nueces County,
19 Texas, and in the course of doing -- while in the
20 course of attempting to or while committing a robbery.
21 That's how they charged it.

22 So there are certain serious felonies
23 that, if you do them and you commit a murder in the
24 process, then it becomes a capital murder, in this
25 case, robbery or attempting to commit robbery. Now,

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1 until they can prove it, if at all that -- if they
2 can, maybe they can't. Could you follow that law?
3 A. Yes, sir.
4 Q. Okay. Also as part of this, Defendant has a
5 right -- well, like I told you, earlier, they don't
6 have to do anything. They don't have to present
7 evidence, they don't have to present witnesses,
8 because they don't have the burden of proof. Never
9 shifts. Always stays on this side of the table, that
10 is, the prosecution side.

11 As part of that, Defendant doesn't have
12 to testify. Now, I submit to you there are many
13 reasons why a defendant may not want to testify.
14 Maybe his lawyers have told him, "Hey, they haven't
15 proven their case. No need for you to testify."
16 Maybe he's uneducated, maybe he -- maybe he stutters
17 when he gets stressed out. Not all of us are meant
18 for the stage, okay? Not all of us are eloquent
19 speakers.

20 But, in any event, law says if the
21 Defendant chooses not to testify -- and we don't know,
22 he may, he may not -- but, if the Defendant chooses
23 not to testify, can't hold it against him. The
24 factfinder, that is, in this case the jury, can't hold
25 it against him. You can't go back to the jury room

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1 the State has to prove all of it, okay? For them to
2 prevail on the -- on a capital murder conviction, they
3 have to prove all of the elements of the crime, and
4 that means they have to prove all of the elements of
5 murder, plus they have to prove that he was -- that
6 the Defendant was committing or attempting to commit a
7 robbery.

8 Now, you may go back there to the jury
9 room and say, "You know what, I think they've got --
10 they got the murder, but they don't -- they don't have
11 the robbery," or maybe vice versa, maybe you think --
12 they -- "I think they've proven an attempted robbery
13 and maybe he's guilty of that, but they don't have the
14 murder, they don't have the elements for it." You
15 understand, you can't find him guilty of capital
16 murder, unless the State proves each and every element
17 beyond a reasonable doubt. You understand that?

18 A. Both. Yes, sir.

19 Q. Both. The whole thing.

20 A. Right.

21 Q. It's not like a best of seven series, you
22 know, they got -- they got to run the table. They got
23 to get them all. And I -- I don't know exactly how
24 many elements there are, I haven't counted them up,
25 but they've got to prove them all to you. You

1 understand that?

2 A. Yes, sir.

3 Q. Could you hold the State to that burden?

4 A. Yes, I could.

5 Q. Okay. And that it means that if they don't

6 prove one of the elements that you'd have to find them

7 guilty at least of capital murder. You understand

8 that?

9 A. If they don't prove all the elements?

10 Q. Of capital murder, you can't find him guilty

11 --

12 A. Yeah. Yes, sir, I could.

13 Q. I mean, he may be guilty of something else,

14 maybe a lesser included, maybe not, okay, but you

15 can't find someone guilty of capital murder unless the

16 State proves all of the elements of capital murder.

17 A. Yes, sir.

18 Q. Okay. And you could follow that.

19 A. Yes, sir.

20 Q. Okay. Now, if you -- well, let me -- let me

21 back up a little bit. In Texas, we have a bifurcated

22 trial system. And all that means is, is that we have

23 two parts. The first part is guilt or innocence

24 phase. And what happens is the State presents their

25 evidence; Defense, if they want to can present

1 is easier for me, so I'm going to --

2 MR. JONES: Okay. We've got to find a

3 common board, here.

4 THE COURT: All right. Well, we can --

5 we can -- all right, this is Special Issue 2, that is,

6 "After taking into consideration all the evidence,

7 including the circumstances of the offense," which is

8 the guilt or innocence part, the charge itself, "the

9 Defendant's character and background, and the personal

10 moral culpability of the Defendant, is there a

11 sufficient mitigating circumstance or circumstances to

12 warrant that a sentence of life imprisonment, rather

13 than the death sentence be imposed," and the jury

14 would have to answer yes or no to that question, okay?

15 Now, this question -- this is sort of

16 like taking -- taking everything into account, is

17 there any mitigating circumstance or circumstances to

18 give life instead of death? And what can that be?

19 Maybe Defendant was a good guy, maybe he was a bad

20 guy, maybe Defendant's never been in trouble in his

21 life, maybe he's been in trouble a bunch. You know,

22 there's -- mitigating circumstances are -- are things

23 that lessen, aggravating circumstances are things that

24 increase, correct?

25 A. Yes, sir.

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1 evidence. They don't have to, of course, and then we

2 argue the case to you and we give you the Charge,

3 which is a packet of law, kind of an instruction book

4 of what to do, and you go back there and you

5 deliberate whether the State has proven beyond a

6 reasonable doubt the offense charged, in this case,

7 capital murder.

8 If the Defendant is acquitted of capital

9 murder, you go home. Done, it's over with. If the

10 Defendant is convicted of capital murder, there are

11 two options. Defendant can get either life in prison

12 or the death penalty, all right? But you don't say

13 life in prison or death. You answer questions, okay?

14 And I'm going to walk down here and show you.

15 If you'll look over here, this is one of

16 the questions. This is the first question. Jury

17 would -- would be asked Special -- we call them

18 "Special issues," but questions, whatever, "Is there a

19 probability that the Defendant would commit criminal

20 acts of violence that would constitute a continuing

21 threat to society," and the jury would either answer

22 yes or no, okay? You follow me?

23 A. Yes, sir.

24 Q. Okay. Then -- oh, that's why you -- that's

25 why you turned that off. Yeah, in any event -- this

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1 Q. And you'd have to take into consideration all

2 of the things that -- that would be presented to you

3 in that -- in that, okay? Could you -- could you --

4 could you sit and answer that question?

5 A. Yes, sir.

6 Q. All right. So you could -- at the beginning

7 of this trial, I'm going to give the oath to the

8 jurors, and the oath is going to go something like

9 this, "Do you solemnly swear that you can render a

10 true verdict based upon the law and the evidence

11 presented to you in this case?" Jurors take the oath.

12 All right? So you could -- you could sit in this case

13 and determine whether the State's proven their case

14 beyond a reasonable doubt, first?

15 A. Yes, sir.

16 Q. And you could, then, if -- if, in fact, the

17 Defendant is found guilty of capital murder, you could

18 truthfully answer these questions?

19 A. Yes, sir.

20 THE COURT: All right. Well, then, I'll

21 turn you over to Mr. Skurka.

22 VOIR DIRE EXAMINATION

23 BY MR. SKURKA:

24 Q. Hi, Mr. Calbat. How are you today?

25 A. I'm all right. How are you?

1 Q. Okay. Tell me about how you felt about the
2 first day. Remember, you walked in that room with all
3 those people in there and you probably didn't know
4 what kind of case it was until the Judge came down and
5 said, "Folks, this is a criminal case and this is a
6 capital murder case. If you get selected on this
7 jury, you may have to make a decision on whether this
8 person lives or dies." How did you feel about that
9 when you first heard it was that kind of case?

10 A. Uh --

11 Q. What was your first reaction?

12 A. -- interested, I guess. You know, I've never
13 been a part of that, and -- and that's about it.
14 Just -- just curious about, you know, how the case
15 would go.

16 Q. Some people I watch them and they go, "Oh,"
17 they hear it's a capital murder case and they go, "Oh,
18 my gosh, I got to do this," and they kind of freak out
19 or panic or worry about how to do that. Did any of
20 that strike you that way?

21 A. No. The first time I learned the definition
22 of capital murder was when you explained it.

23 Q. Okay. I see. So this was nothing that would
24 put you off on being this kind of jury, you -- in
25 fact, you were interested and curious about how it

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1 worked, the system worked?

2 A. Yes, sir.

3 Q. Okay. And the reason I say that is because a
4 lot of times people don't know how it works, until
5 they're actually called in and we explain things. But
6 I just kind of wanted to feel -- and I noticed a lot
7 of people, too, you know, when they heard it's that
8 kind of case and, you know, they stood up and sat up a
9 little straighter, listened a little more attentively
10 to make sure they got everything, what the Judge and
11 the lawyers said. Was that one -- you were one of
12 those people?

13 A. Yes, sir.

14 Q. Super. And I should tell you before you
15 start, there's no right or wrong answers to any of
16 these things. We just want you to know -- tell us
17 what your true feelings about the items are that were
18 in the issues we're going to talk about. Don't answer
19 them in such a way you think the Defense wants to
20 hear, the Judge wants to hear, I want to hear, you
21 just tell us how you feel about the things, okay?

22 A. Yes, sir.

23 Q. And, of course, the big issue was the death
24 penalty. If somebody came up to you a week ago,
25 before you had this jury selection notice where you

1 came in with that group of people, and they said,
2 "Hey, how do you feel about the death penalty," how
3 would you answer it?

4 A. I'd -- if the crime fits, I -- I feel like I
5 can give the death penalty. I -- I feel like it's
6 justified in our society.

7 Q. When you say, "If the crime fits," I think
8 what you're saying is kind of what the legislature
9 says, the law says, it's not every case that gets the
10 death penalty, right?

11 A. Correct.

12 Q. You can't go forge a check or, you know,
13 steal somebody's bicycle and get the death penalty.
14 The law says only certain kinds of cases are even
15 eligible for the death penalty. Remember, I kind of
16 gave you a list of the, like, killing a kid under six
17 or killing a policeman on duty or murder for hire or
18 killing several people or generally -- killing
19 somebody while you're committing robbery, burglary,
20 kidnapping and rape? Those are the four main
21 felonies.

22 In other words, if you just rob somebody,
23 it's not capital murder. If you just murder somebody,
24 it's not capital murder, but if you put the two
25 together that's what makes it eligible for the death

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1 penalty. Follow me on that?

2 A. Yes, sir.

3 Q. And -- and I don't know if you knew that
4 before or not, but a lot of times people come up to me
5 and say, "Hey, Mark, you now, how come that was a
6 murder case, how come you didn't give the death
7 penalty?" Well, it didn't qualify. So it sounds to
8 me you kind of go with that because what you said was
9 "If the crime fits." So we know that this kind of
10 crime, if it's proven, murder plus robbery, fits those
11 kind of circumstances where you can get the death
12 penalty, so you -- the law kind of agrees with you.

13 THE COURT: Mark, I -- I need to -- I
14 need to take a small break, just --

15 MR. SKURKA: Sure.

16 THE COURT: Just take five minutes.
17 (Short recess.)

18 (Proceedings continued.)

19 MR. SKURKA: May I continue?

20 THE COURT: Yes, I'm sorry.

21 MR. SKURKA: Thank you, Judge.

22 Q. (BY MR. SKURKA) I think where we left off, we
23 were talking about the punishment -- I'm sorry, the
24 proper case, and you said, "if it fits the crime," and
25 everything and how the legislature goes through and

1 says what cases are capital. And I said, "In this
2 case, we're alleging murder plus the robbery." And,
3 as the Judge instructed you, and I think we did the
4 very first day on my PowerPoint, it basically says
5 robbery is -- is theft or taking something by force or
6 by threats of force. And the law also says it doesn't
7 have to be a completed robbery. It says it can be a
8 murder while in the course of committing robbery or
9 attempting to commit robbery.

10 In other words, you don't always have to
11 have a completed crime to have a robbery. See what
12 I'm saying? Like, say, you rob a bank and they catch
13 you as you're leaving the bank. Well, you can't just
14 say, "Well, I didn't rob the bank, because I didn't
15 get away." You still committed robbery by taking the
16 stuff by force or threat. Do you follow me on that?

17 A. Yes, sir.

18 Q. Okay. We talked about the feeling about
19 making -- how do you feel about making that -- having
20 to be called upon to make that decision on whether to
21 give the death penalty or not on a case?

22 A. I -- I feel like it -- it be interesting to
23 be able to serve and be able to be a part of that
24 decision.

25 A. Okay. The reason I asked is, sometimes

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1 people say, "Look, Mark, I'm for the death penalty. I
2 think it's a good law. I think we should have it,
3 and, yes, we should have the death penalty, but don't
4 put me in that position to do it myself." You see
5 what I'm saying?

6 A. Yes, sir.

7 Q. Some people believe in the death penalty.
8 But I tell them, "Look, you may be on this jury,
9 sitting in one of these chairs here, and there come a
10 time when I prove -- if I anticipate proving the
11 evidence to you beyond a reasonable doubt, that I'm
12 going to ask for the death penalty." And I told you
13 that the very first day, right, the State is seeking
14 the death penalty. Do you think you could do that?
15 And look at him right there. It's not somebody you
16 see on T.V. or read about in the news, that's him. Is
17 there a way you could participate in that decision if
18 you believe the evidence showed that he should get the
19 death penalty?

20 A. I think so. I -- I hadn't really, I guess,
21 thought of it at that level until, you know, I -- I
22 hadn't really pondered at night as I'm going to sleep
23 whether I could sit there and say that, but...

24 Q. That's kind of what I'm pinning you down on.
25 Do you think you could follow through with it?

1 A. I -- I believe so.

2 Q. You see what I'm saying? And it's okay
3 however you feel. It's just that some people say,
4 "Look, you know, I could do it, you know, but, I mean,
5 I believe in the death penalty, but just don't make me
6 be the one to actually do it." And sometimes people
7 say, "Well, I don't really decide that, the Judge
8 decides the death penalty." He doesn't. It's the
9 jury that makes the decision, based on how they answer
10 certain questions.

11 So you don't have a problem participating
12 in that decision if it's called for?

13 A. No, sir, I don't.

14 Q. Now, I'm going to turn it around on you. If
15 you believe that the evidence is such a way that he
16 should be found not guilty, can you find him not
17 guilty?

18 A. Absolutely.

19 Q. And if you think that maybe after you hear
20 all of the evidence and he should get a life sentence,
21 instead of a death, based on the circumstances, can
22 you give him a life sentence?

23 A. Absolutely.

24 Q. Okay. And so you're not leaning one way or
25 the other, death or life, right?

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1 A. I'm trying -- yeah, absolutely not, yeah.

2 Q. And you're not supposed to. That's what
3 we're trying to -- to make sure you're not. And as
4 far as whether he's guilty or not right now the law
5 says that he's presumed innocent. As he sits right
6 now, he starts off presumed innocent. You can't just
7 say, "Well, I don't know yet, because I haven't heard
8 anything," because he has to start with innocence and
9 it's up to the State to prove the case beyond a
10 reasonable doubt. You agree with that concept?

11 A. Yes, sir.

12 Q. And -- and that just means, at this point,
13 because the trial hasn't started yet, you know, just
14 because he's presumed innocent at that -- at this time
15 doesn't mean he is innocent, it just means he's
16 presumed at this time because you haven't heard any
17 evidence, okay?

18 A. Yes, sir.

19 Q. Can you follow that part of the law?

20 A. Absolutely.

21 Q. The other part of the law is that he doesn't
22 have to testify if he doesn't want to. Under the
23 Fifth Amendment, he has that right to testify or not
24 testify, and if he doesn't testify, I'm pretty sure
25 this Judge is going to tell you, you can't hold that

1 against him. Can you follow that law?
 2 A. Yes, sir.
 3 Q. Because some people say, "Hey, you know, I
 4 want to hear both sides." You may not hear both
 5 sides. You have to go with what the evidence that is
 6 given you, and you can't say, "Well, he didn't
 / testify, so he must be guilty." You can't do that.
 8 You can't hold that against him. Can you follow that
 9 law?

10 A. Yes, sir.

11 Q. Okay. And -- and that -- that goes to him
 12 and anybody accused of a crime. But, God forbid
 13 you're accused of a crime, you would want them to have
 14 to prove it, right?

15 A. Absolutely.

16 Q. And if you didn't want to testify, you didn't
 17 feel like you could testify or have to testify, you
 18 don't have to. You can't hold that against him. Now,
 19 sometimes people also say, "Well, we found him guilty
 20 of capital murder, so he automatically gets the death
 21 penalty. He's guilty of capital murder. He
 22 automatically gets the death penalty," and I have to
 23 tell them, "Nothing in this world is automatic," okay,
 24 except maybe -- well, I better not say it. I was
 25 going to say something about the Dallas Cowboys losing

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1 on Sunday, but --

2 A. Or Texas.

3 Q. -- it seems like it's been automatic, lately.
 4 Anyway, I'm just kidding. Nothing's
 5 automatic. You have two choices, if you go to the
 6 first part of the trial and you think there's not
 7 enough evidence to prove him guilty beyond a
 8 reasonable doubt, you vote not guilty. If you think
 9 there is enough evidence to prove beyond a reasonable
 10 doubt, then you vote guilty.

11 Then you go to the next phase of the
 12 trial. In the next phase of the trial, instead of
 13 automatically saying he gets the death penalty, you
 14 may get to hear additional evidence about what the
 15 guy's background is, you know, whether he's a good guy
 16 or bad guy, you know, did he make good grades in
 17 school or was he in, you know, the penitentiary ten
 18 times before, you know? So you want to make a
 19 decision based on everything that you hear before you
 20 make that ultimate decision whether he gets death or
 21 life.

22 And the law says you don't vote for,
 23 "Okay, we'll check off death here or life here." You
 24 don't check it off like that. You answer two
 25 questions, and it's how you answer those questions

1 determines what sentence he gets. And the first
 2 question is up there on the board, right here, and
 3 I'll ask you to look at it with me. It says, "Is
 4 there a probability that the Defendant would commit
 5 criminal acts of violence that would constitute a
 6 continuing threat to society?" We call that "the
 7 future dangerousness question."

8 Basically, it says, is there a good
 9 chance, a probability, doesn't say certainty, because
 10 unless you have a crystal ball, it's kind of hard to
 11 tell what somebody can do for sure in the future. And
 12 the law doesn't require me to prove for sure what he's
 13 going to do, it just says, "Is there a probability
 14 that the Defendant..." And it also says, "would
 15 commit criminal acts of violence." That could be
 16 almost any kind of act of violence. It doesn't mean
 17 you necessarily think he's going to murder somebody
 18 down in the future, but is this guy, is it possible or
 19 probable that he could hurt somebody down the line and
 20 cause other -- do other criminal acts.

21 And finally, the third part says, "which
 22 would constitute a continuing threat to society."
 23 Sometimes people tell me, "Well, Mark, you know, why
 24 do you have to give them the death penalty? Why can't
 25 you just give them a life in prison, because if you

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1 put them in prison, that takes them away from
 2 society." And I say, "Wait a minute. What is society
 3 designed to be?"

4 Society really talks about everybody,
 5 human people, human beings in society. Who else is in
 6 a prison besides the prisoner?

7 A. Guards.

8 Q. Guards, other prisoners, maybe people that
 9 work in the prison, like maintenance people or medical
 10 people, right?

11 A. Uh-huh.

12 Q. So, would you agree that even though you're
 13 in prison, you're not removed from all other human
 14 beings, right?

15 A. That's correct.

16 Q. I mean, unless we have, like, a desert
 17 island, you're there by yourself, you'd -- you'd be
 18 removed from society, but prison is still in society.
 19 It sounds a little weird, at first, because, I mean,
 20 you don't have all the benefits of open society, but
 21 there's still people interacting around you. Have you
 22 ever heard of that happening before, where maybe a
 23 prisoner hurts another prisoner or attacks a guard or
 24 something like that? You've probably heard that,

25 A. Sure.

1 Q. -- right?

2 A. Sure.

3 Q. So just because they're removed and put in

4 prison does that mean that they'll never commit any

5 other criminal acts of violence?

6 A. Not necessarily.

7 Q. No, the -- the opportunity is still there.

8 And so, the first question goes like

9 this. You already think he's guilty and you voted

10 guilty for capital murder. The next question is do

11 you think there's a chance or a good chance that the

12 Defendant would commit criminal acts of violence that

13 would constitute a continuing threat to society, yes

14 or no? And how do you make that decision? Well,

15 again, like you have -- you don't have a crystal ball,

16 but sometimes, would you agree with this theory,

17 sometimes you can tell what a person's going to do in

18 the future by what they've done in the past?

19 A. Sometimes.

20 Q. Sometimes you can. It's not absolute, a

21 hundred percent, but you kind of want to know a

22 person's track record, for lack of a better word,

23 right?

24 A. Uh-huh.

25 Q. I mean, was this guy an Eagle Scout and made

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1 straight A's in school or did this guy, you know, been

2 to prison ten times before, something like that? So

3 you have to -- and that's what you have to do, you

4 wait until you hear all the other evidence. Now, you

5 can still consider the circumstances of the event

6 itself, you know, if it's proven what he did that

7 night, you can consider that, also, but you probably

8 want to know more about his background, too. And you

9 may get to hear additional evidence, like, good guy,

10 bad guy, what his track record is. So you answer this

11 yes if you think he's a continuing threat to society,

12 and, no, if you don't think he is.

13 Then you go to the second question, which

14 is this one, it's a big word, what we call "mitigating

15 circumstances." And I'll confess to you, I didn't

16 know what mitigating was, either, before I went to law

17 school. But I like to tell people it's kind of like

18 the opposite of aggravating circumstances.

19 Aggravating means something that makes the punishment

20 worse and mitigating means something that makes the

21 sentence less. In other words, it's still the same

22 crime, but is there any reason that you want to give a

23 lesser sentence of life, instead of the death

24 sentence? Is there any reason to come down from death

25 to life? In other words, you had found him guilty of

1 capital murder, you answered this Special Issue No. 1,

2 yes, I think he's a continuing threat to society, but

3 before you impose a death penalty, the Judge gives you

4 this next question, and it says this, "Take into

5 consideration all of the evidence, including the

6 circumstances of the offense," what happened that day,

7 was it a real heinous crime or was it just kind of a

8 minor deal, "the Defendant's character and his

9 background," and that goes into whether he's a good

10 guy, bad guy, if he has a criminal history or doesn't

11 have a criminal history, "and the personal and moral

12 culpability, is there a sufficient mitigating

13 circumstance or circumstances to warrant that a

14 sentence of life imprisonment, rather than death

15 sentence be imposed?" In other words, is there any

16 reason, and is it enough reason to outweigh the death

17 penalty and give him a life sentence?

18 Well, that's up to the jury to decide.

19 What is a mitigating circumstance or circumstances is

20 completely up to the jury. This Judge is not going to

21 go up there and say, "Well, because he made good

22 grades in school you have to give them a break and

23 give them a less sentence because he was, you know,

24 the, what do you call it, valedictorian in high

25 school, that doesn't mean he gets a lower sentence,

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1 just because he's young, doesn't mean he gets a lower

2 sentence," it's up to the jury to decide, first of

3 all, is it a mitigating circumstances or -- and then,

4 is it sufficient enough?

5 Now, what can be a mitigating

6 circumstance is almost anything. The only thing the

7 Judge is going to tell you you have to do is don't

8 close your mind to them. You have to consider all

9 these things. Whether you think it's mitigating and

10 you give effect to it is up to the jury.

11 Let's get away from the law stuff and

12 talk more -- a better example. You've never been on a

13 jury before, right?

14 A. No. That's correct.

15 Q. Okay. Say there was two cases, two burglary

16 cases, and you're sitting there and you're going to be

17 a juror on both the burglar cases and they're separate

18 cases. And you come in there and you say, "Well, gah,

19 two burglars? They're bad. I don't like people that

20 break into people's houses and steal something," which

21 is what burglary is, "that's bad. I want to treat

22 them both the same and give them the highest

23 sentences, because I don't like burglars."

24 Well, they're both found guilty of

25 burglary, but then the facts and circumstances are a

1 little different. Say, in the first burglary, what
 2 happened was, a guy kicked in the back door, broke the
 3 door down, went into the house, stole all the jewelry,
 4 all the money, all the T.V.s and stereos and all the
 5 equipment, all the valuables inside; and then when he
 6 was leaving the house, he just tore up the house,
 7 knocked things over, broke things, tore up furniture,
 8 stuff like that. And then you find out, in that case,
 9 this isn't the first time he's been charged with
 10 burglary. He's been convicted of burglary and been to
 11 prison five times before for burglary. So that's the
 12 first case.

13 Now, look at the second case. In the
 14 second case, the guy's charged with burglary. He's
 15 convicted of burglary because he broke into somebody's
 16 house and stole something, that -- without consent.
 17 But, in this case, it's a little different. He didn't
 18 kick in the back door. What happened was the back
 19 door was unlocked and he went in there. He didn't
 20 even go through the house and ransack the house. He
 21 went in the kitchen and he took a loaf of bread and
 22 some food to go feed his family, his kids who were
 23 hungry, didn't take the jewelry, didn't take any
 24 money, he didn't take anything else, just stole food
 25 out of the pantry to feed his kids.

1 penalty, because you found him guilty of capital
 2 murder, you think he's a continuing threat to society,
 3 but before do you that, the Judge says, "Hey, take the
 4 big picture in, take in what happened that night, his
 5 background, his character, his personal moral
 6 culpability, is there enough of a mitigating
 7 circumstances to outweigh that sentence of life,
 8 rather than death?"

9 In other words, you do a little balancing
 10 test. Is it enough? Some jurors may say, "I don't
 11 care if he had -- was an Eagle Scout. I don't care if
 12 he had straight A's in high school. He still did this
 13 crime, you know? We have to punish him for it, you
 14 know?" And other people may say, "Well, you know,
 15 because of this and that, we'll give him a break."
 16 It's up to the jury to decide, okay? We can't tell
 17 you what to do with this stuff. But the law says you
 18 have to keep an open mind and consider these things.
 19 You may consider them and reject them and say, "Hey,
 20 that's not enough to outweigh what he did, you know,
 21 sorry." Or you can just say, "Yes, there is," or,
 22 "No, there's not."

23 So if you answer that question yes, or
 24 this question yes, and this question no, no, there's
 25 no reasonable to lower the sentence, this Defendant is

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1 And then you look at his background and
 2 you find out this guy's never been to prison before,
 3 in fact, this is the first time he's ever been
 4 arrested for anything in his life. Would you punish
 5 those two guys the same?

6 A. I wouldn't, no.

7 Q. No, of course not. Why not? Because one is
 8 worse than the other. That's what -- that's what that
 9 question's about. In the first case, they're
 10 aggravating circumstances, right, tore up the place,
 11 stole everything, been to prison before. In the
 12 second case, it could be mitigating. The jury may
 13 say, "Hey, that's mitigating. All he did was steal --
 14 was steal was food. All he did was -- he didn't break
 15 anything or tear anything up." And the jury may
 16 consider he's never been to prison before. That might
 17 be a mitigating circumstance. See how you don't know,
 18 until you hear all the evidence?

19 A. Yes, sir.

20 Q. And then when you hear the evidence, then you
 21 make that balancing test. Is it enough to give him a
 22 lesser sentence of life rather than death? Now, do
 23 you follow the scheme? It makes kind of sense, right?

24 A. Yes, sir.

25 Q. It looks like you're heading for the death

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1 sentenced to death. If you answer it any other way,
 2 he gets a life sentence. Follow me?

3 A. Yes, sir.

4 Q. Okay. That's kind of the scheme, how it
 5 works. One other legal thing I should tell you about
 6 is there's also a part of the law that says,
 7 "Voluntary intoxication is not a defense to crime."
 8 Voluntary intoxication. In other words, if you go get
 9 yourself drunk or you go get yourself high, you cannot
 10 use that as an excuse to crime. You can't go rob a
 11 bank and say, "Oh, well, I'm not guilty of robbing
 12 this bank, because I was drunk when I did it." You
 13 can't do that. That's no excuse for a crime.

14 The law does say that it's a possible
 15 mit- -- it could be a mitigating circumstance. "Well,
 16 we're going to give him a break, because he was drunk
 17 when he did that." Does that mean you automatically
 18 give him a break? No. It's up to the Judge.
 19 Remember I said it's not automatic. It's that
 20 weighing, that balancing test. You have to decide if
 21 that's enough or not, okay?

22 A. Yes, sir.

23 Q. Any questions about the mitigating
 24 circumstances? Does that make sense, now, aggravating
 25 and mitigating?

1 A. Yes, sir, it does.

2 Q. It's kind of a trick thing because you hear
3 about two burglars, you think they're all the same,
4 right, but every case is different, and it depends on
5 what the facts are. And I know that's what everybody
6 wants you to do, the Judge, the Defense and us, is
7 wait till you hear all the evidence before you make a
8 decision. Can you do that?

9 A. Yes, sir.

10 Q. And you're not leaning one way or the other,
11 right?

12 A. No, sir.

13 Q. What did you think when you saw the Defendant
14 for the first time, because he seems to a young --
15 fairly young man. Do you think that should make a
16 difference, how a person looks, on how you judge them?

17 A. Not really. But that's what I thought, he
18 was young. I didn't notice until we were almost done
19 that he was sitting there, and, you know, he seems
20 very young.

21 Q. Do you think that makes a difference on
22 making the decision in this case?

23 A. (No response.)

24 Q. By what a person looks like or how young he
25 is?

1 A. No, no. But, you know, it's just
2 unfortunate, maybe people haven't seen enough or been
3 around enough and they don't think things through,
4 but, no, you know, it's not a difference.

5 Q. Okay. Well, let me tell you what the law
6 says. In Texas, you cannot give the death penalty to
7 somebody who's under 18 years of age. That's what the
8 law says. A 16 year old does the most horrible crime
9 in the world, can't give the death penalty. It's only
10 -- and I assume you're saying because by the time
11 you're 18, you probably know the law and you probably
12 know the difference between right and wrong, right,
13 and then -- and so it really doesn't matter if you're
14 23, 33, 53, there's no time limits, age limits, is
15 what I'm trying to say, once you're past 18. Would
16 you agree with that?

17 A. Yes, sir.

18 Q. Because -- and, now, you understand that
19 youth, the fact that he's young, can be a possible
20 mitigating circumstance. Somebody may say, "Well,
21 gosh, you know, he's so young, maybe we shouldn't give
22 him the death penalty," then other people say, "Look,
23 he may be young compared to you and me, but he's old
24 enough to know better." See what I'm saying?

25 A. Yes, sir.

1 Q. And -- and so would you agree with me that
2 age may be something to consider, but it could be
3 aggravating, it could be mitigating, depending on what
4 it is?

5 A. Sure. What I meant was, I don't even know if
6 he was under 18 at the time of the crime or whatever.

7 Q. I'm telling you, he wasn't under 18.

8 A. Okay.

9 Q. He couldn't be or we wouldn't even be here.

10 A. Well, okay.

11 Q. I think the evidence is going to show he's
12 going to be much older than that, he just has a
13 youthful appearance.

14 A. Okay.

15 Q. Okay? The second thing is appearance. Would
16 you agree with me it doesn't matter what a person
17 looks like?

18 A. I would agree, correct.

19 Q. It's what they did, right?

20 A. Yes, sir.

21 Q. Sometimes people come in to jury duty -- and
22 I don't know, if you've never been on a criminal case
23 before, they expect to see Charles Manson sitting
24 there, right, big, scary-looking guy with unkempt hair,
25 and crazy-looking? And -- or maybe some guy with a

1 bunch of tattoos, biker-looking guy. And they see a
2 guy that's, you know, cleaned up, dressed up, nice
3 looking and they think, "Well, how could he have done
4 that, you know? He seems like such a nice guy."
5 Would you agree with me that you can't make a decision
6 based on that?

7 A. Yes, I would.

8 Q. Would you make a decision in this case based
9 on what he did, rather than what he looks like?

10 A. Yes, I would.

11 Q. And that's a fair thing to say, right?

12 A. I believe so.

13 Q. Okay. Now, since -- there's a couple of
14 other things I want to go over. The legal parts are,
15 first of all, No. 1 is, remember that a person has
16 been indicted by the grand jury, he's been indicted
17 for capital murder. That doesn't mean he's guilty,
18 though. Remember, that's just the charging inference,
19 and how the State brings the case. And the Judge will
20 probably tell you that just because he's indicted
21 doesn't mean that he's guilty, right?

22 A. Correct.

23 Q. And he starts with the presumption of
24 innocence. Do you agree with that?

25 A. Yes, sir.

1 Q. And the Fifth Amendment, meaning he can
2 testify if he he wants to. If he doesn't want to, he
3 doesn't have to. You can't hold that against him. I
4 don't know if he's going to testify or not, that's him
5 and his lawyer's decision, but you agree that you
6 won't hold that against him if he doesn't?
7 A. Correct.
8 Q. And you agree that right now he's presumed
9 innocent.
10 A. Yes, sir.
11 Q. Okay. And that only changes once the State
12 proves it beyond a reasonable doubt. And the State
13 has the burden of beyond a reasonable doubt, and it
14 doesn't mean beyond any doubt, all doubt, shadow of a
15 doubt, it just means beyond a reasonable doubt. I
16 like to tell people to look at it two ways: First of
17 all, do you have a doubt; and the second thing is, if
18 you have a doubt, do you have a reason for the doubt?
19 And the law doesn't require me to prove
20 everything to you a hundred percent beyond all doubt
21 or shadow of a doubt. Have you ever flown on an
22 airplane before?
23 A. Yes, sir.
24 Q. Did you know for sure, for sure that plane
25 wasn't going to crash?

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1 A. No, sir.
2 Q. You didn't. Why did you get on it, then?
3 A. You know, because it's probably going to get
4 where it's going.
5 Q. That's right. And you know why? You
6 probably went on this plane and it looked like it was
7 in good operating order, and you probably saw the
8 pilots getting on, and you see it's a reputable
9 airline that maybe doesn't have a history of plane
10 crashes, and everything seems to be working in order
11 and everything like that, so you get on the plane. Do
12 you know a hundred percent that that plane is not
13 going to crash?
14 A. No, sure.
15 Q. But you had a belief beyond a reasonable
16 doubt that plane wasn't going to crash or else you
17 wouldn't have taken it, right?
18 A. Right.
19 Q. It's kind of hard to define beyond a
20 reasonable doubt. But all I'm trying to tell you
21 there's no way I could prove it to you beyond all
22 doubt, just like there's no way you can prove that the
23 plane isn't going to crash.
24 A. Right.
25 Q. There was a part in your questionnaire about

1 your church, and I think it said something about --
2 what -- what religion are you?
3 A. Baptist, Christian.
4 Q. Baptist. And do they feel -- how do they
5 feel about the death penalty?
6 A. (No response.)
7 Q. Oh, you put, "Only God has that right." So
8 they're against the death penalty?
9 A. Yes.
10 Q. And how do you feel about going against what
11 they think? You say you disagree with them.
12 A. Well, you know, in society that we live in
13 today, and if -- if the crime fits, I mean, that's --
14 that's the way we live and that's the way we go about
15 day to day, you know. It's -- that's where we're at.
16 Q. So you think the law of the land is the law
17 of the land, it should be obeyed.
18 A. Yes, sir.
19 Q. Would that be -- is that another way of
20 saying it?
21 A. It's a better way than I could say, yeah.
22 Q. I'm not trying to put words in your mouth,
23 I'm just trying to figure out where you're --
24 A. Yeah.
25 Q. Because some people say -- like Catholics,

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1 for example, are against the death penalty, generally
2 speaking, but then some people say, "Well, look, you
3 know, if the Pope says this, I've got to do this. I'm
4 against the death penalty," then other people say,
5 "Well, you know, the Church teaches that, but I have
6 my own mind and I disagree with that particular
7 teaching, and like my --" you think it's necessary in
8 some cases?
9 A. Yes, sir.
10 Q. That's what it sounds like to me, that you
11 wish -- you know, the death penalty is necessary and
12 -- in some cases.
13 A. Yes, sir.
14 Q. Not every case, but the case that it fits.
15 Okay. I don't think I have any other question for
16 you. Do you have any questions of me?
17 A. No, sir.
18 Q. The bottom line is, do you think you can be
19 fair and impartial in this case?
20 A. Yes, sir, I do.
21 Q. Listen to all the evidence before you make a
22 decision?
23 A. (Nods head.)
24 Q. And if you make a decision, can you follow
25 through with it?

1 A. Yes, sir.
 2 MR. SKURKA: Thank you, Mr. Calbat. I
 3 appreciate you talking to me.
 4 THE COURT: Mr. Garza.
 5 MR. JONES: I'm going to do the
 6 questioning.
 7 VOIR DIRE EXAMINATION
 8 BY MR. JONES:
 9 Q. How are you? How do you pronounce your last
 10 name?
 11 A. Calbat.
 12 Q. Calbat. Now, how long have you lived in
 13 Corpus Christi?
 14 A. I moved away at as younger teenage for a
 15 couple of years, but pretty much all my life.
 16 Q. Okay. So, you kind of grew up around here.
 17 A. Yes, sir.
 18 Q. Okay. You have a son?
 19 A. Yes, I do.
 20 Q. Age 16?
 21 A. (Nods head.)
 22 Q. Does he live here in Corpus Christi?
 23 A. Yes, sir. Orange Grove.
 24 Q. Does he live with you?
 25 A. No, sir.

1 Q. Lives with his mother?
 2 A. Yes, sir.
 3 Q. Okay. Do you see him regularly?
 4 A. Yes, sir.
 5 Q. Okay. And, let's see, at age 16, where are
 6 you in school at age 16?
 7 A. He's a junior this year.
 8 Q. Junior.
 9 A. Yes, sir.
 10 Q. Okay. In Orange Grove.
 11 A. Yes, sir.
 12 Q. Now, let's see, you work at Valero, --
 13 A. Yes, sir.
 14 Q. -- right?
 15 A. Yes, sir.
 16 Q. And tell me specifically what kind of work
 17 you do. You wrote it down here, but...
 18 A. I'm an instrument technician. I work
 19 maintenance for them. I repair -- I repair
 20 instrumentation, technical measuring devices for the
 21 refinery, as -- as they need to be repaired.
 22 Q. And how long have you worked for them in that
 23 kind of work?
 24 A. In March it will be nine years.
 25 Q. Okay. So you -- you're building up some

1 seniority there.
 2 A. Not really.
 3 Q. Not really? That's not a long time?
 4 MR. SKURKA: Over there they have guys
 5 have been there a long time.
 6 Q. (BY MR. JONES) Chances are you're not going
 7 to get laid off.
 8 A. Well, you never know.
 9 Q. You're making gasoline. Let's see, where did
 10 you get your training for that job?
 11 A. I -- I started as a helper in -- in fitting
 12 and installations, and I -- I didn't have any
 13 training. I just did that for several years before I
 14 got hired and then at the same time as I got hired,
 15 I -- I went to the technical school here at Del Mar.
 16 But I was already hired when I did that, I did that
 17 for my own. So just experience. I -- I started the
 18 installation part of it in construction after I turned
 19 18 and I -- I just...
 20 Q. So you started --
 21 A. I started on my 18th birthday.
 22 Q. -- on your 18th birthday? So you --
 23 A. Actually.
 24 Q. -- you started working for them, so -- all
 25 right, so -- now, let's get -- the purpose of this

1 questioning is to make -- let us satisfy ourselves
 2 that you understand the rules that apply in a criminal
 3 case. It's particularly important in this case
 4 because a man's life could literally be at stake,
 5 okay? I like to give the example of when I was in the
 6 -- in the military, I flew in airplanes, and most of
 7 the planes that I flew in had two seats in them. When
 8 you start out, you -- when you're learning how to fly,
 9 you have an instructor that's usually in the back seat
 10 and the student sits in the front.
 11 One day we were on a training mission and
 12 we were stopped at an airport and we were standing
 13 outside the plane and I noticed a jet plane that had
 14 only one seat in it. And I asked my instructor, I
 15 said, "How do you learn how to fly one of those planes
 16 if there's only one seat?" Okay, he says, "Well, you
 17 get a guy that's got his wings and you give him this
 18 book on how to fly that airplane, he goes and reads
 19 the book and he gets in the plane and starts it up and
 20 takes off and flies it. That's how you do it." He
 21 said, "You have to do it right the first time." And I
 22 thought to myself, "Well, that's -- there's a lot of
 23 things in life you have to do right the first time,"
 24 okay.
 25 There's some kinds of professions where

1 the -- the worker has to do the right thing every
 2 time, almost, like the -- like Mr. Skurka asked you
 3 about the airplane. I want my pilot on those -- on
 4 the Southwest Airlines to make no mistakes. He's
 5 taking me to Houston. Is that the way you feel?
 6 A. For a pilot, yes.
 7 Q. If you were going to get surgery, you know,
 8 you know, major surgery, you would want your surgeon
 9 not to make any mistakes, right?
 10 A. Yes, sir.
 11 Q. So there's certain kinds of endeavors where
 12 we want to make -- do the best we can the first time,
 13 okay? And most people go through their whole lives
 14 and never have to serve on a jury, never get called,
 15 but you have a -- and I take it that's your situation,
 16 you've never been on a jury before.
 17 A. Correct.
 18 Q. And so, you've been -- you're potentially a
 19 juror in one of the most serious kinds of cases that
 20 can be tried in a Texas court. You understand that?
 21 A. Yes, sir.
 22 Q. The -- the Texas Constitution and the United
 23 States Constitution gives -- give citizens a right to
 24 trial by jury in a criminal case. In other words,
 25 where the person's been accused of a crime, in a

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1 felony case, you get a jury of 12. Do you agree with
 2 trial by jury as being a right that we have?
 3 A. Yes, sir.
 4 Q. Why -- why do you think it's a good thing to
 5 have trial by jury?
 6 A. I think you have an opportunity for every
 7 average day people from different walks of life to
 8 come up with a united opinion.
 9 Q. Why can't we just let the Judge decide?
 10 A. Well, that's one person.
 11 Q. It's one person?
 12 A. He -- he can --
 13 Q. Why can't we just let the chief of police
 14 decide?
 15 A. Because that's just one person. And we all
 16 have flaws and mistakes, you know?
 17 Q. All right. Every society, our society and
 18 every other society has to have a set of rules.
 19 People, you know, they have to have a set of -- a
 20 government and they have to decide what kind of
 21 conduct is forbidden, and that conduct is set out in
 22 the our Penal Codes. We have to have a machinery for
 23 enforcing those laws, you know, "Thou shall not
 24 steal," et cetera, et cetera, okay.
 25 And if almost -- when you have a set of

1 rules, you have to have some way of enforcing them,
 2 which usually means a procedure for finding when
 3 you've done something wrong, and then, too, whether --
 4 you know there's some kind of sanction that follows
 5 it, okay? Well, under our law, when we have a trial
 6 by jury, before a person can be declared guilty of a
 7 crime and before he can be punished, a jury has to
 8 sign off on it, okay?
 9 A. Okay.
 10 Q. And in our society from where does the power
 11 of government come from?
 12 A. From the people.
 13 Q. That's right. What did we do just a couple
 14 of weeks ago?
 15 A. We voted.
 16 Q. We voted, put in -- we put in -- put in a
 17 bunch of new legislators and other officeholders,
 18 right?
 19 A. Yes, sir.
 20 Q. Okay. And so, we voted for them. They take
 21 on that. They become -- they get power to do things,
 22 and you want them to do a good job, right?
 23 A. Yes, sir.
 24 Q. Okay. So, basically, the jury -- the jury
 25 system says that before the government can declare

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1 somebody guilty of a crime, and before they can punish
 2 him they have to get clearance, permission from a
 3 jury. They have to go to the source of the power.
 4 That would be you, right, if you're on the jury. What
 5 is the jury?
 6 A. (No response.)
 7 Q. It's a cross-section of?
 8 A. People.
 9 Q. The people from where the power comes from,
 10 okay? So do you like that idea?
 11 A. I do.
 12 Q. Okay. The jury is not a rubber stamp of the
 13 District Attorney's Office. The jury is not a rubber
 14 stamp for the police department or the -- and while
 15 the jury is a branch of the Court, it is not a rubber
 16 stamp of the Court. It is an independent body, okay.
 17 What does a jury do, what is it's primary
 18 function?
 19 A. To decide.
 20 Q. Decide what?
 21 A. Innocent or guilt.
 22 Q. It basically decides facts, what are the
 23 facts, okay, and the Judge will tell you what facts
 24 need to be found before you can declare somebody
 25 guilty, okay? So, basically, you decide what

1 happened, and if you believe -- well, let me get into
 2 the standard of proof. What is the standard of proof
 3 in a criminal case, what degree of certainty do you
 4 have to have before you can find somebody guilty?
 5 A. Beyond a reasonable doubt.
 6 Q. That's right. That's the phrase we use.
 7 It's the highest degree of certainty required in a --
 8 in a legal case in a Texas court. Why do you suppose
 9 the legislators who created our system chose to assign
 10 that standard of proof to criminal cases, or as a --
 11 some lesser standard of proof, like preponderance of
 12 the evidence?
 13 A. Because I suppose they want to make sure,
 14 absolutely sure that -- that you're certain that
 15 the -- that the -- that there is no doubt that the
 16 person is guilty or innocent, or --
 17 Q. What's at stake?
 18 A. -- guilty.
 19 Q. What's at stake in a criminal case?
 20 A. Somebody's freedom.
 21 Q. That's right. Liberty, right?
 22 A. Yes, sir.
 23 Q. And in our American civilization what do we
 24 value most?
 25 A. Our freedom.

1 Q. Our freedom. Life, liberty and the pursuit
 2 of happiness, okay? So, before the government can
 3 take it away by putting someone in jail or taking his
 4 life or his property, we want to make sure that it's
 5 necessary. Is it really necessary? Is there a good
 6 -- is there a good reason to do this? We just don't
 7 want to do it, you know, haphazardly, okay.
 8 So do you agree with all of that?
 9 A. Yes, sir.
 10 Q. Okay. So the jury -- the jury performs a
 11 very valuable function. It's independent, not a
 12 rubber stamp for anybody. And -- now, not only did --
 13 does a defendant have the right to a jury, but a
 14 defendant who is also a citizen has a right to an
 15 impartial jury. What does that word mean to you,
 16 "impartial"?
 17 A. Somebody that's willing to hear the evidence
 18 before they make a decision.
 19 Q. Okay. A person is impartial if they come to
 20 the task at hand with no prejudgment. In other words,
 21 they -- they don't have any opinion about the case one
 22 way or the other, okay? Also, they come to the task
 23 without any leanings towards one side or the other,
 24 which is another way of saying biases. There are all
 25 kinds of biases. We all have them. Like, for

1 example, if -- if you, as a juror, were -- had -- were
 2 related to the Defendant, you were a nephew or uncle
 3 or a cousin, that would be a family bias, okay? If
 4 you -- let's -- let's say that you were the victim of
 5 a crime similar to the one that was on trial here, you
 6 know, maybe you had a family member that was, then you
 7 might have a situational bias. I here might -- it's
 8 kind of like, have you ever had your house
 9 burglarized?
 10 A. No, sir.
 11 Q. Well, if you ever -- if you have had your
 12 house burglarized, it kind of gives you a bad feeling
 13 about the whole thing, you know? And so, if you're
 14 called to sit on a jury in a burglary case, you might
 15 have a bias about it, might have a leaning against the
 16 defendant, just because of what happened to you, okay?
 17 A. If -- if I'm picking a jury in a D.W.I. case,
 18 I'm probably not going to -- to sit a highway
 19 patrolman on my jury. Why?
 20 A. Because he -- he sees them all day long. I
 21 mean, that -- he's the one that put them there.
 22 Q. Okay. That's called "an occupational bias."
 23 A. Okay.
 24 Q. I'm trying an arson case, I'm probably not
 25 going to let a fireman sit on the jury, okay? Why?

1 A. Occupational.
 2 Q. I want him to be biased. I want the fireman
 3 to be biased against fires, okay?
 4 A. Uh-huh. My house is on fire, I want him to
 5 get there quickly, put it out and to save me, if
 6 necessary, okay? Just like I want the highway
 7 patrolman on Highway 77 to protect me if I'm -- while
 8 I'm traveling to Houston, okay? I want him to be
 9 there. So, you know what -- you see what I'm saying?
 10 A. Yes, sir, I do.
 11 Q. In a criminal case, the best juror is one
 12 that comes to a matter with an open mind, doesn't have
 13 any leanings to one side or the other, is the kind
 14 that say, "Okay, let me -- Mr. Prosecutor, you have
 15 the burden of proof, what do you have? You say this
 16 man's guilty of a crime, let's hear the evidence. You
 17 want -- you know, if you -- if I find him guilty, you
 18 want me to do certain things, then you prove that
 19 that's the best thing to do."
 20 That's your -- that should be your
 21 attitude. Do you think that can be your attitude if
 22 you're on this jury?
 23 A. Absolutely.
 24 Q. Okay. I believe you said you didn't -- you
 25 don't know anything about the case from reading the

1 newspaper.
 2 A. Oh, I've read the newspaper, but I didn't
 3 know, until we were almost done. I remembered reading
 4 it --
 5 Q. Okay.
 6 A. -- a long time ago.
 7 Q. But you didn't -- you didn't pay any
 8 particular attention to the article, I mean, you don't
 9 remember any specific facts?
 10 A. I remember there was a guy and either one or
 11 two girls, and I -- I think that -- no, I don't know
 12 much, other than I think they've already been
 13 convicted.
 14 Q. Okay.
 15 A. And -- and I thought I remembered the
 16 Defendant wasn't caught for a long time, or something
 17 like that.
 18 Q. Okay.
 19 A. But, no, I didn't really put much thought
 20 into it.
 21 Q. So, do those facts, knowing those facts from
 22 the media -- and the law doesn't, you know, require
 23 you to be uninformed about current events, do you have
 24 any opinion, right now, about the guilt or innocence
 25 of this Defendant?

1 A. Not really.
 2 Q. You qualified your answer.
 3 A. What?
 4 Q. You qualified your answer. You said, "Not
 5 really." Why did you say "not really" instead of no?
 6 A. No, I -- I don't -- I don't know if he's
 7 guilty or innocent until I hear the evidence. But,
 8 no, the -- the trial, I mean, the way it's going, the
 9 way I see it is you-all seem to be preparing as he's
 10 guilty and focusing more on the punishment, and stuff
 11 like, just as I read what's going on.
 12 Q. Okay.
 13 A. That's what I see, but, no, you know, I hope
 14 he's not.
 15 Q. Okay.
 16 A. I'd hate to be in his shoes.
 17 Q. Okay. So you think because we're asking you
 18 questions about the punishment stage of the trial that
 19 we -- you think we're going to get there?
 20 A. Yes.
 21 Q. Do you -- do you think that that -- that
 22 feeling that you have about that would influence your
 23 ability to reach a verdict in this case?
 24 A. No, I don't. I would like to say just one
 25 thing --

1 Q. Sure.
 2 A. -- is -- about you're -- you're -- where
 3 you're trying to get. I personally wish that, if I
 4 was in his shoes, I would hope that more people would
 5 -- I'm biased for myself --
 6 Q. Uh-huh.
 7 A. -- would be more like me, because, you know,
 8 I -- I feel like I would try to be fair if -- if there
 9 were a doubt.
 10 Q. All right. Let's go back. As I told you,
 11 the law does not -- with all the -- the media that we
 12 have, television, newspapers, Internet, you can't
 13 presume that our citizens who come in here would be
 14 ignorant of current events. And I read the newspaper,
 15 I read about stories, and I -- I get -- I form
 16 opinions based on just what I'm reading, "Oh, this guy
 17 has done this or this guy has done that," and so
 18 forth, okay.
 19 But what you have to do as a juror,
 20 you -- you have to consciously set that information
 21 aside. Sometimes that's hard to do, and only you can
 22 tell me. I think I'm sensing that you can do this.
 23 "I know I've read all this, it came from the
 24 newspaper, but I'm going to set this aside. I'm going
 25 to clean the slate. I'm going to wait to see if

1 Mr. Skurka can prove the case, okay, and, if he can't,
 2 I'm going to follow my oath and find the Defendant not
 3 guilty." Can you do that?
 4 A. I believe so, yes, sir.
 5 Q. And you keep saying, "I believe so." I want
 6 you to say "I can do it."
 7 A. I can do it.
 8 Q. Okay. Because that's what the law requires,
 9 and you're going to take an oath that you'll follow
 10 the law. The law says, if you have a reasonable
 11 doubt, that you have to find the Defendant not guilty,
 12 okay? What does not guilty really mean?
 13 A. It means the State didn't prove their case.
 14 Q. Exactly. Does not mean innocence. Maybe
 15 only God can know whether he's actually guilty or
 16 actually innocent, but we deal with legal -- we have
 17 have to deal with legal truth, which is what human
 18 beings can know, okay? But, in your mind, if you have
 19 a doubt, a reasonable doubt, then you have to say, not
 20 guilty, which means, "Judge, the State didn't prove
 21 their case." You can do that.
 22 A. Yes, sir.
 23 Q. Okay. Now, in any criminal case, the Judge
 24 will tell you that -- what is a -- what is a verdict?
 25 You said, "The jury has reached a verdict." What does

1 that mean?

2 A. They've come to a decision, --

3 Q. Decision, --

4 A. -- I suppose.

5 Q. -- that's what it means. A verdict is a

6 decision. Before a jury can announce its decision,

7 they have to have a unanimous vote. That means all

8 jurors have to vote the same way; however, that

9 doesn't mean that reaching that -- that point is a

10 democratic process, it's an individual process. You,

11 individually, have to make a decision on the issues of

12 the questions that are presented to you and if

13 everybody has the same answer, then you've got a

14 verdict, okay.

15 So will you do -- will you follow that?

16 A. Yes, sir.

17 Q. Are you sure you can -- and it may be that --

18 that, you know, after fully discussing the evidence,

19 you might feel one way and 11 of the other jurors

20 might feel another way. Do you think you could stick

21 to your vote if you strongly feel --

22 A. Absolutely.

23 Q. Okay. That doesn't mean you shouldn't listen

24 to the other jurors and discuss it. If you reach a

25 final decision and you're comfortable with it, you

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1 think you can stick to it?

2 A. Yes, sir.

3 Q. Let me talk about beyond a reasonable doubt

4 just for a minute. I want to give -- it's not give --

5 you're not given a definition. You know it's the

6 highest degree of certainty that's required, and I

7 like to give an illustration of the problem of beyond

8 a reasonable doubt.

9 Let's say you have a box. For the

10 record, I'm showing you the side of a box and down at

11 the bottom of the box there's a -- there's a hole near

12 its face, about two inches in diameter. Into the box

13 you place a small mouse and also you place into the

14 box a cat that likes to eat mice. You put a top on

15 the box and you come back an hour later, and you open

16 the box and the cat is still in the box, but the mouse

17 is gone, okay? Did the mouse escape or did the cat

18 eat the mouse?

19 A. Mouse escaped.

20 Q. How do you know?

21 A. I don't.

22 Q. You don't. Okay. From the information that

23 I've given you, can you know beyond a reasonable doubt

24 what happened?

25 A. You didn't give me much information.

1 Q. Well, I know, but, I mean, you can't know,

2 can you?

3 A. No.

4 Q. Okay. So that's the problem that a jury has

5 at the end of a case. They -- they sit back in their

6 chair and said, "Okay, has the State given us enough

7 information that we believe to be true, upon which we

8 can make a decision to the degree of certainty that

9 the law requires?" Now, I could add facts to that

10 illustration. I could say you open the box, the cat

11 was still there and the box had blood all over it in

12 the inside. That's circumstantial evidence of what?

13 The mouse probably got eaten.

14 A. Probably.

15 Q. Okay. Of course, he could have been wounded

16 and escaped and left blood behind, but -- or if the

17 tail is sticking out, coming out of the cat's mouth,

18 you'd probably --

19 A. My cat won't eat them. He brings them.

20 Q. He brings them --

21 A. He just plays with them and leaves them.

22 Q. You see what I'm talking about?

23 A. Yes, I do.

24 Q. And who gets to decide that? That's what the

25 jury does, okay?

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1 A. (Nods head.)

2 Q. And, I want -- and I want to talk about the

3 punishment issues. Now, keep in mind, just because

4 I'm talking about these issues doesn't mean I think

5 this is -- we're going to get there. I'm required by

6 law to do this, okay? This is the only time that we

7 have a chance to talk to you about it. So, when you

8 said, "Well, I feel like since we're talking about the

9 punishment issues that, you know, these people believe

10 we're going to get there," don't assume that, okay?

11 A. Okay.

12 Q. Because we're required to do this. So you

13 don't know.

14 A. All right.

15 Q. All right. Let's talk about -- I need to

16 under -- for you to satisfy myself that you understand

17 how this procedure works legislature set up. In the

18 old days in a capital murder case, if the jury found

19 the Defendant guilty the jury would go back in the

20 box -- go back in the room at the punishment stage and

21 they'd say, "Okay, what are we going to give this guy,

22 life sentence, 50 years in prison, 25 years in prison

23 or are we going to give him the death penalty?" And

24 they'd vote, say, for the death penalty.

25 Well, the foreman of the jury writes,

1 "Death," the word, "death" on a verdict form on a
2 piece of paper and hands it to the Judge, okay? They
3 don't do that anymore. You will never -- the -- the
4 foreman of -- of the jury will never write the word,
5 "Death," on any piece of paper, okay?

6 Instead, the jury in a Texas capital
7 murder case, if they get to that second stage, have to
8 decide whether certain conditions exist. The
9 legislature has told us what those conditions are. If
10 certain conditions exist the Defendant will
11 automatically get the death penalty. If those
12 conditions do not exist then he won't. He'll get
13 what?

14 A. Life.

15 Q. Life. That's the only other choice, right?
16 So if that's -- if these conditions do not exist, then
17 he would get a life sentence.

18 A. I didn't know that before coming in here. I
19 didn't know that it's automatically death. I --

20 Q. No, it's not. If -- if the -- if certain
21 conditions are found to be true, then the punishment
22 is death.

23 A. Oh, I didn't --

24 Q. If those conditions are not found to be true,
25 then it's life, okay? So you can argue that you're

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1 not voting on the death penalty directly, but you
2 really are, okay? All right, let's take -- there are
3 two questions, or special issues that are given to the
4 jury. Let's see, do you see the first one there on
5 the floor?

6 A. Yes, sir.

7 Q. Okay. I'm looking at the one on the bulletin
8 board. It's the same one.

9 A. You want me to move it under?

10 Q. No, no, no. I know what it is. I can see
11 it, if you can see it. Call it Special Issue No. 1,
12 and it asks the jury, "Is there a probability that the
13 Defendant would commit criminal acts of violence that
14 would constitute a continuing threat to society?"

15 Do you understand that question?

16 A. Yes, I do.

17 Q. Is there anything -- is there anything you do
18 not understand about the question?

19 A. No, sir.

20 Q. Can you imagine a situation where you
21 believed that there was a probability that a Defendant
22 would -- will commit criminal acts of violence in the
23 future that would not be a continuing threat to see
24 society?

25 A. Absolutely.

1 Q. I don't like the -- the way the question's
2 written is kind of bizarre, to me. But, anyway, it's
3 asking you is this guy going to be doing violent acts
4 in the future? Now, what's the word "probability"
5 mean?

6 A. Most likely.

7 Q. Okay.

8 A. If I tell you, "There's a probability it's
9 going to rain this afternoon," and you say, "Well, why
10 do you say that," okay, well then, I'm going to give
11 you certain facts, okay? I looked out -- I looked out
12 the window and there's a big, dark cloud over in the
13 north and it's coming this direction. There's
14 lightening coming out of it. I see people running to
15 their cars with umbrellas, okay? I'm giving you facts
16 which support my opinion that there's a probability.
17 So probability is based on fact. You agree with that?

18 A. Probability is based on fact?

19 Q. Yeah, that's right. For example, let's take
20 in your work. You work with these, what do you call
21 it, the --

22 A. Instrumentation.

23 Q. -- instruments, okay? Those instruments have
24 parts, right?

25 A. Uh-huh.

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1 Q. Right?

2 A. Yes, sir.

3 Q. And they -- they -- some of the times they
4 wear out; is that correct?

5 A. Yes, sir.

6 Q. And you replace them.

7 A. Yes, sir.

8 Q. And sometimes you will go into a -- to one of
9 those instruments and you'll look and you'll see a
10 part that looks like it's worn, okay, you just know
11 that from experience. And you tell your supervisor,
12 "I think if we don't replace that part I think there's
13 a probability that it's going to fail within the next
14 30 days," okay? See what I'm saying?

15 A. Yes, sir.

16 Q. Okay. So what -- you're saying that there's
17 a probability is based on a fact, right? What?

18 A. The fact that --

19 Q. That the part --

20 A. -- it looks worn.

21 Q. That's right.

22 A. Yes.

23 Q. So if you say there's a probability that
24 something's going to happen, you have to have some
25 facts to back that up.

1 A. Yes, sir.

2 Q. Okay. And that's what the jury does in a

3 case. You -- the State will try to offer evidence

4 that there is a probability and the Defense would

5 offer evidence that it's not, okay? But you have to

6 decide.

7 And not only do you have to decide, but

8 you have to make a decision beyond a reasonable doubt,

9 okay? Can you do that?

10 A. Yes, sir.

11 Q. Okay. So, if you answer Special Issue No. 1,

12 yes, okay, the Judge will instruct you to go forward

13 and answer Special Issue No. 2. If you answer Special

14 Issue No. 1, look at it one more time, --

15 A. Uh-huh.

16 Q. -- no, the Judge will instruct you to stop

17 your deliberations and to return your answer to the

18 Court, at which time he will impose what sentence?

19 A. It would be life.

20 Q. That's right. Because one of the conditions

21 has not been met, right?

22 A. Correct.

23 Q. Okay. So -- but if Issue No. 1 has been

24 answered yes, well, that's one condition, so let's go

25 to the second, which is probably the most important

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1 question that a capital murder jury will answer, okay,

2 is this question: So let's go look at it, again, it's

3 up there on the board.

4 What does -- said, "Take into

5 consideration all of the evidence, including the

6 circumstances of the offense, the Defendant's

7 character and background." What does that mean,

8 "Character and background"?

9 A. His history --

10 Q. It's his history --

11 A. -- past.

12 Q. -- his biography, okay, the kind of person he

13 is. If I say that -- if I say that you are a person

14 of good character, what does that mean?

15 A. Means you're known -- you have a good

16 background, you -- you're known to -- to be of good

17 character.

18 Q. Okay. Do you agree that our -- that our --

19 that every society, and ours particularly, has a

20 certain set of rules of good conduct?

21 A. Yes.

22 Q. Okay. Like honesty. And if you say a person

23 has good character, that would basically say that

24 person confirms to that code of conduct.

25 A. Correct.

1 Q. If I'm an honest person, I'm a person of good

2 character. If I don't steal, I'm a person of good

3 character, et cetera, okay. Do you agree -- you agree

4 with that?

5 A. More than than those two things, but, yes.

6 Q. I mean, there's much -- of course, there's

7 much more to it, but -- so, now, a person's background

8 is, gosh, that's anything in his history, right, from

9 the day he was born, right? And -- now, the next

10 one's a little more difficult. "And the personal

11 moral culpability of the Defendant."

12 Okay. Well, personal's easy, right?

13 A. Uh-huh.

14 Q. That's the Defendant. What's -- what's

15 "Moral culpability" mean?

16 A. His morals, how he conducts himself.

17 Q. Okay. Well, basically, it's the opposite of

18 that first one we talked about. If you say a person

19 has good character, that means he conforms to a

20 certain code of conduct, to a large extent, so that he

21 has a reputation of that. A person's moral

22 culpability is the extent to which -- culpability.

23 What does culpability mean?

24 A. I'm not sure. Capability? Like that?

25 Q. It means that you're subject to blame.

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1 A. Okay.

2 Q. Okay? If you're culpable, you're guilty.

3 A. I didn't know that.

4 Q. Okay? See, I don't like them to use that

5 language. That's -- that language was drawn out of a

6 Supreme Court case. Basically I think that asks you

7 to consider this, and listen to me carefully, to what

8 extent has the Defendant, in the -- based on the facts

9 of the case, deviated from the standards of moral

10 conduct? Did he deviate just a little bit or a whole

11 lot, okay? You follow me there?

12 A. No. Say that again.

13 Q. A person's moral culp- -- "the moral

14 culpability of the Defendant." I'm suggesting that

15 that means that the jury consider to what extent that

16 the Defendant has deviated from the -- the code of

17 moral conduct --

18 A. Okay. All right, gotcha.

19 Q. -- that the community accepts. Could be a

20 little bit, it could be a whole lot, okay? It's a

21 matter of degree. So if he has personal moral

22 culpability, once again, that's a hard place to

23 understand, but that's what I -- from my reading --

24 A. Makes a lot more sense now.

25 Q. Okay, how it works? Now, "Is there a

1 sufficient mitigating circumstance or circumstances to
2 warrant that a sentence of life, rather than death be
3 imposed?"

4 A. (Shakes head.)

5 Q. Okay. This brings us to that -- the word,
6 "To mitigate," the verb, "to mitigate." What does it
7 mean?

8 A. To decide?

9 Q. Nope. And I don't blame you for not knowing
10 the meaning of that word. As Mr. Skurka said, he
11 didn't -- he didn't learn what it meant till he got to
12 law school.

13 A. He -- he explained that -- the opposite,
14 which --

15 Q. He didn't really -- he didn't really define
16 it. He defined it by giving it what he considers to
17 be its opposite meaning, okay? The verb, "to
18 mitigate," is a simple definition. It means to
19 lessen, okay, to lessen, to make less.

20 Now, in the context of a criminal case
21 where jurors are deciding punishment, a mitigating
22 circumstance is a circumstance which would cause you
23 to want to give a lesser punishment. It's that
24 simple. Is there anything, is there any fact in the
25 case which would cause you to want to give a life

1 sentence, rather than the death sentence? Is there
2 anything in the case? It's got to be based on the
3 evidence in the case. Is there anything based on the
4 evidence in the case which makes me personally feel
5 that a life sentence is more just than a death
6 penalty?

7 Now, if your answer is yes, then that's
8 your vote. Okay? Now, let's say that the jury has
9 answered Special Issue No. 1 yes, but the jury answers
10 Special Issue No. 2 yes. What sentence is going to be
11 imposed?

12 A. That would be the death penalty.

13 Q. Think again.

14 A. Oh, I know what you mean. I was -- I was
15 thinking just -- I -- I know exactly what you mean.

16 Q. All right. So if the jury answers --

17 A. That would be --

18 Q. -- yes --

19 A. I don't know what the punishment would be if
20 they said yes to this one.

21 Q. Okay. Now, think about it.

22 A. It would be --

23 Q. If they answer --

24 A. -- not death.

25 Q. It would be not death, you're correct.

1 That's right. So in order to get the death penalty in
2 Texas, Special Issue No. 1 has to be answered yes.

3 A. Yes.

4 Q. And Special Issue No. 2 has to be answered?

5 A. No.

6 Q. No. So if the Judge looks at that verdict
7 form and sees "yes, no," the law requires he -- he
8 doesn't have any discretion, he has to impose the
9 death penalty, okay?

10 A. Okay.

11 Q. But if he looks at that verdict form and he
12 sees yes, to Special Issue No. 1 and yes, to Special
13 Issues No. 2, what punishment is he going to impose?

14 A. Life, I suppose. 'Less than death.

15 Q. That's exactly right, you got it. That's --
16 so you think you understand how it works?

17 A. Absolutely.

18 Q. Okay. Now, on these two questions, both
19 sides can offer evidence. There will be a second
20 stage of the trial, if we get that far, where we can
21 offer you evidence to help you make that decision.
22 And the standard of proof remains the same, beyond --
23 beyond a reasonable doubt.

24 A. (Nods head.)

25 Q. Do you have any questions at this point?

1 A. No, sir.

2 Q. You've kind of been going to school here.

3 A. I know. I -- you know, I'm learning
4 something.

5 Q. In other words, if you get in that jet plane,
6 I want you to be able to fly it right the first time.

7 A. Well...

8 MR. JONES: Okay. That's all I have,
9 Your Honor.

10 THE COURT: I have one.

11 MR. JONES: Oh, the Judge has one.

12 VOIR DIRE EXAMINATION

13 BY THE COURT:

14 Q. Steve Calbat is who to you?

15 A. My father.

16 Q. Your father. Okay. Now, his -- his case,
17 would that have any -- would that make it difficult
18 for you to serve in this case or have nothing to do
19 with it?

20 A. Nothing to do with it.

21 MR. SKURKA: Can I follow up on that,
22 Judge, please?

23 THE COURT: Uh-huh.

24

25

1 VOIR DIRE EXAMINATION

2 BY MR. SKURKA:

3 Q. Does your -- does your dad have the case
4 pending currently?

5 A. No, sir.

6 Q. How long ago was the case?

7 A. Four years, maybe. Four years maybe.

8 Q. Okay. Was that here in Nueces County?

9 A. Yes, sir.

10 THE COURT: Okay.

11 Q. (BY MR. SKURKA) And I don't know -- I'm not
12 sure if I'm familiar with that. Could you tell me a
13 little bit about it, please?

14 A. He --

15 THE COURT: It was done in federal.

16 VENIREPERSON NO. 23: He went to Bird
17 Island Basin, and he had drinks with a friend and came
18 back and -- and a federal officer was in his vehicle,
19 and my father hit the curb and hit his door, and it
20 ultimately ended up the officer lost his leg over it,
21 and -- and he was charged with assault and he served
22 three years -- or -- or two in a -- two in prison and
23 one out, or -- it was three years, I believe. And
24 he's -- he's now out and off of parole, and that's
25 about that.

1 hold it against the government for --

2 A. Not at all.

3 Q. -- doing what they had to do.

4 A. Not at all.

5 Q. And -- and it sounds like you made peace with
6 the person that it was unfortunate that it happened
7 to. Can I ask you a dumb question, then? Do you
8 think alcohol or drugs can be an excuse to doing a
9 crime?

10 A. It's not an excuse. I -- I do understand
11 how, you know, the person can -- can sometimes not be
12 fully aware of the repercussions, but it's no excuse.

13 Q. Okay. And that's unfortunate with your dad,
14 but, I guess, you know, you understand the law is the
15 law and --

16 A. I understand.

17 Q. -- it has to be there.

18 A. I got to watch how the point system worked
19 because of, you know being federal, like what --

20 Q. You know about the points?

21 A. Well, I didn't till I -- I know a little bit
22 what -- what, I guess, what was automatic was they
23 charged with assault, and so that meant so many
24 points. And then, I guess, the type of vehicle and
25 stuff like that, so...

1 Q. (BY MR. SKURKA) Well, I appreciate the Judge
2 bringing this up, because I was going to, either -- or
3 going to, also. But, I guess, what I'm looking at is,
4 you know, it wasn't our office. It was the
5 prosecutors over in the federal courthouse doing it.
6 But, still, it was law enforcement, you know, bringing
7 charges against him and everything. Is that going to
8 work against us over here for any reason?

9 A. No, my father made a mistake, and I -- you
10 know, I -- it's unfortunate for the man. I had to
11 watch that, and -- and, you know, the circumstances
12 were bad. I had to -- when it was all done, and --
13 and, you know, I -- he wasn't sure about me. I had to
14 go over there and tell him I apologize for him and his
15 family and shake his hand, and, you know, he wasn't
16 sure how to take me, at first, because -- just because
17 it's my father he was thinking, you know, that I'm
18 automatically was going to feel bad about him. I feel
19 bad for the man.

20 Q. It does sound like it was a unfortunate
21 situation.

22 A. It was.

23 Q. He was, like, a park ranger or what?

24 A. Yes, sir.

25 Q. A park ranger, I see. And so, you didn't

1 Q. You know, that's not to many -- to much
2 different from the aggravating circumstances and
3 mitigating circumstances. Like, if you're in federal
4 court and you have a drug case, if you have a lot of
5 drugs, it's going to go higher. If you have less
6 drugs, it's going to go lower. If you've got a prior
7 conviction for drugs, it's going to go higher. If you
8 have no conviction for drugs, it's going to go lower.
9 So, it's kind of the same scheme. I -- I just need to
10 know if you have some kind of grudge against law
11 enforcement or --

12 A. No.

13 Q. -- or anything like that.

14 A. No. No, sir.

15 Q. I hope your dad's doing better now.

16 A. Thank you.

17 MR. SKURKA: That's all it questions I
18 have.

19 THE COURT: Anything else?

20 MR. JONES: No.

21 THE COURT: All right. Mr. Calbat, would
22 you wait in the jury room --

23 VENIREPERSON NO. 23: Sure.

24 THE COURT: -- while I speak with these
25 lawyers?

1 VENIREPERSON NO. 23: Sure.
 2 (Venireperson exits courtroom.)
 3 THE COURT: Okay. He may not remember,
 4 but I was the prosecutor on that case.
 5 MR. SKURKA: That's what I was going to
 6 ask. I didn't want to say that.
 7 THE COURT: I was.
 8 MR. SKURKA: Because you knew something
 9 about it.
 10 THE COURT: Yeah, he -- it was very much
 11 like he said. It was an accident that the -- the park
 12 ranger lost his leg.
 13 MR. JONES: Unfortunately.
 14 THE COURT: It got smashed between the
 15 door and the car, and he had some broken ribs and --
 16 MR. SKURKA: Was he in the courtroom,
 17 Judge, do you remember?
 18 THE COURT: This?
 19 MR. SKURKA: This guy, watching?
 20 THE COURT: I don't remember. I think we
 21 even did it at the old courthouse.
 22 MR. GARZA: Was it a plea or a trial?
 23 THE COURT: It was a plea, but the issues
 24 on punishment were contested, because it was
 25 *assimilated crimes act, so they have basically

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1 treated it as an intox assault for under Texas law,
 2 and that's kind of how they did it.
 3 MR. SKURKA: Well, that's what I was
 4 trying to figure.
 5 MR. JONES: How did it get the federal
 6 jurisdiction, from the --
 7 THE COURT: Because it was on the -- the
 8 seashore.
 9 MR. SKURKA: It happened on the seashore.
 10 MR. JONES: Oh, on the seashore.
 11 MR. SKURKA: That's what I was trying to
 12 figure out.
 13 THE COURT: That's where that all came
 14 about, but I don't think he's got a problem with it.
 15 So what do you -- what say you, Mr. --
 16 MR. SKURKA: We'll accept him, Judge.
 17 MR. JONES: We'll accept him.
 18 THE COURT: All right. Let's bring him
 19 back.
 20 (Venireperson enters courtroom.)
 21 THE COURT: All right. Mr. Calbat, you
 22 have been selected to be on this jury. And we will
 23 begin the trial, it looks like at this point December
 24 the 1st. We will call you. We'll keep in touch with
 25 you, okay?

1 VENIREPERSON NO. 23: All right.
 2 THE COURT: I don't want you watching the
 3 local news or read the local paper because -- I know
 4 you don't know much about this case. With all due
 5 respect to the media, they don't get it right a lot of
 6 the times. But over and above that, you -- you're
 7 only allowed to consider what's admitted into evidence
 8 in court, okay?
 9 VENIREPERSON NO. 23: Yes, sir.
 10 THE COURT: The other thing is, I don't
 11 want you talking about the facts of this case with
 12 anybody, okay?
 13 VENIREPERSON NO. 23: All right.
 14 THE COURT: Somebody brings it up, say,
 15 "Can't talk to you about this, not until the trial's
 16 over with," all right?
 17 VENIREPERSON NO. 23: All right.
 18 THE COURT: All right, Mr. Calbat, we'll
 19 -- we'll keep in touch, but be prepared to be with us
 20 for the early part of December.
 21 VENIREPERSON NO. 23: Okay.
 22 THE COURT: Okay? If you need a work
 23 excuse, my bailiff can get that for you.
 24 VENIREPERSON NO. 23: I'm all right.
 25 THE COURT: Okay. Thank you. All right,

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1 Mr. Calbat, thank you much.
 2 MR. SKURKA: Thank you, sir.
 3 (Venireperson exits courtroom.)
 4 THE COURT: All right. We only have one
 5 other person here. Obviously, we're going to have to
 6 bring him back after lunch. Why don't we bring him in
 7 and tell him, I guess, 1:00, so we can get rolling.
 8 MR. JONES: We have till 1?
 9 MR. SKURKA: 1.
 10 THE COURT: We'll have to have a quick
 11 lunch today.
 12 (Venireperson enters courtroom.).
 13 THE COURT: All right. You are Mr.
 14 Dicus?
 15 VENIREPERSON NO. 30: Yes, sir.
 16 THE COURT: All right, Mr. Dicus, we're
 17 running a little behind. At this point, we're going
 18 to take a lunch break and bring you back right at
 19 1:00, okay?
 20 VENIREPERSON NO. 30: Okay.
 21 THE COURT: And sorry about that. We're
 22 doing the best we can, but 1:00.
 23 VENIREPERSON NO. 30: All right.
 24 THE COURT: Okay?
 25 VENIREPERSON NO. 30: I'll be back, sir.

1 THE COURT: All right.
 2 (Venireperson exits courtroom.)
 3 (Noon recess.)
 4 (Venireperson enters courtroom.)
 5 THE COURT: All right. All right. Come
 6 up. All right, let's see.

7
 8 VENIREPERSON NO. 30,
 9 THOMAS MONROE DICUS,
 10 VOIR DIRE EXAMINATION

11 BY THE COURT:

12 Q. All right. Let's see here, you are Thomas
 13 Dicus?

14 A. Yes, sir.

15 Q. Is that how you say it?

16 A. Yes, sir.

17 Q. All right, very good. All right. Mr. Dicus,
 18 we're going to talk to you a little bit, okay, first
 19 me and then the lawyers.

20 Okay. Now, Mr. Dicus, we're looking for
 21 jurors that can keep an open mind, okay, and that can
 22 follow the law, all right? And we'll talk a little
 23 bit about the law in a minute, but can you keep an
 24 open mind, first of all?

25 A. Yes, sir.

1 Q. Okay. All right. You know what, I don't
 2 have your questionnaire. I left it back there. Have
 3 you ever been on a jury before?
 4 A. In this court, just downtown, like for
 5 traffic tickets or something once, but that it was it.
 6 Q. Okay. You actually got on the jury?
 7 A. Yes, sir.
 8 Q. Okay. Well, that was a criminal case.
 9 A. Public intoxication, I think.
 10 Q. Yeah, that was a criminal case. Now, the --
 11 it's quite a swing from, you know, public intoxication
 12 to capital murder, but we're going to talk about a few
 13 things that are the same, okay. First of all, in
 14 every criminal case in the State of Texas the burden
 15 is on the State to prove the crime, prove the charge.
 16 They've brought the charges, they got to prove them.
 17 And that's no different from that public intoxication
 18 case that you sat on the jury on to this capital
 19 murder. I mean, that case is probably about the
 20 lowest level of crime and this would be the highest.
 21 But a lot of these same things apply. Burden's on the
 22 State, and I don't know if you recall -- when was
 23 that, by the way, do you remember?
 24 A. Five or six years ago. It's been a pretty
 25 good while.

1 Q. All right. Well, you may remember that the
 2 burden on the State was beyond a reasonable doubt.
 3 You remember that?
 4 A. (No response.)
 5 Q. If you don't, that's okay.
 6 A. Nope.

7 Q. Well, the burden of proof in a criminal case,
 8 in every criminal case, is beyond a reasonable doubt.
 9 And we don't have a definition as to what that is, but
 10 it's the highest burden in the law, okay?

11 Now, it's not -- what it is not, it's not
 12 beyond all doubt, it's not beyond a shadow of a doubt,
 13 but it is the highest burden. Would you be able to
 14 follow the law and hold the State to that burden, no
 15 more, no less?

16 A. Yes, sir.

17 Q. Okay. Now, next thing I need to talk to you
 18 about, and along those same lines, is this, the State
 19 has to prove the charges, like I've already told you.
 20 Defense doesn't have to do anything, okay? They
 21 brought the charges, they got to prove them. And, as
 22 part of that, Defendant is innocent until he's been
 23 proven to be guilty. They may or may not be able to
 24 prove it, okay? But Defendant is presumed to be
 25 innocent until they can prove it. And the law says,

1 "State, you -- you bring charges, you know what, maybe
 2 you've got the evidence, maybe you don't, but you --
 3 we don't just speculate about it. You got to prove it
 4 and you got to prove it to the people of the jury,"
 5 which is the people, right?
 6 A. Yes, sir.
 7 Q. "State, you got to prove it to the people
 8 what you've -- what the -- the allegations that you've
 9 brought." And that sounds fair, doesn't it?
 10 A. Yes, sir.
 11 Q. Okay. You -- you agree with that?
 12 A. Yes, sir.
 13 Q. And you could -- and you could presume this
 14 Defendant to be innocent until they prove it, if they
 15 can?
 16 A. Yes, sir.
 17 Q. Okay. Now, as part of that, if they've got
 18 to prove it, that is the State, and the Defense
 19 doesn't have to do anything, the burden never shifts
 20 over to this side, in other words, there's some places
 21 in the world where, you know, the State charges you
 22 with something and you got to prove your innocence.
 23 We don't do that here. We don't do that here. As
 24 part of that, they don't have to put on any evidence,
 25 and -- and as part of that, Defendant doesn't have to

1 testify.
2 And I'll submit to you there's lots of
3 reasons why somebody wouldn't want to testify.
4 Maybe his lawyers say, "They haven't proven their
5 case. We don't have to testify." Maybe the
6 Defendant's not educated. Maybe he gets nervous.
7 Maybe he stutters. You know, maybe he's terrible at
8 getting in front of -- in front of people and just
9 gets petrified, okay? Lots of reasons, all right?

10 But I -- the law says you can't hold it
11 against the Defendant if you're a juror in this case.
12 Now, if you would hold it against the Defendant, and
13 some people say they would, anyway, they say, "You
14 know what, I know that's the law, but, you know what,
15 I'd still hold it against him," okay? I need to know
16 that. Or would you say, "No, I -- I wouldn't hold it
17 against him?" I need to know whether you'd hold it
18 against the Defendant if he chose not to testify.

19 A. No, sir.

20 Q. Okay. Now, let's talk a little bit about the
21 charge, capital murder. And you've heard -- you've
22 probably heard of capital murder before. You've
23 seen -- seen it on the news. You -- you know, I don't
24 know, you may watch CSI Miami or those kind of shows,
25 I don't know.

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1 A. I don't watch a lot of T.V., but...

2 Q. Okay. But you've heard of the capital murder
3 charge.

4 A. Yes, sir.

5 Q. What is it? Well, there's murder, and -- and
6 murder is the intentional taking of a life of another,
7 okay? And we know what that is. What's capital
8 murder? I like to call it, like, murder plus, okay?
9 There -- there's a laundry list that the legislature
10 has said that this type of murder is regular murder
11 and this type of murder is capital murder, okay.

12 In this case, the State is alleging that
13 the Defendant committed the offense of murder on X day
14 in Nueces County, Texas, and that while doing that, he
15 attempted -- he was in the process of committing or
16 attempting to commit a robbery, okay?

17 A. Yes, sir.

18 Q. That's what makes it capital. In other
19 words, murder, but while trying to commit a robbery or
20 committing a robbery. Two -- two big felonies put
21 together, in other words, okay? The legislature has
22 said, you know, you get these two felonies put
23 together in combination of one another, and -- and
24 that's capital, okay? You follow me?

25 A. Yes, sir.

1 Q. Okay. Now, the law says, for the capital --
2 capital murder conviction, the State has to prove each
3 and every element of capital murder, that is, the
4 State can't just prove to you the murder part and not
5 the robbery part or the attempted robbery, okay? And,
6 likewise, they can't just say, "Well, we came in here
7 and we've proven you a robbery," all right --

8 A. Yes, sir.

9 Q. -- to get the capital murder part. Now, they
10 may be guilty of something else, but they have to get
11 -- prove all of the elements of the whole offense.
12 You understand that?

13 A. Yes, sir.

14 Q. Would you hold the State to that burden --

15 A. Yes, sir.

16 Q. -- make them prove all their elements?

17 A. Yes, sir.

18 Q. Okay. Now, in Texas, in criminal cases we
19 have what's called the "bifurcated system," and that
20 is, you have the guilt or innocence phase. In other
21 words, first part of the trial goes like this: The
22 State tries to prove to the jury, through evidence
23 presentation that this Defendant's guilty of the
24 offense of capital murder. And the Defense, they
25 might put on some evidence, they might not. I suspect

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1 they'll certainly ask the State's witnesses questions,
2 if nothing else.

3 But, in any event, after this case is
4 submitted to you for your deliberations, you know, the
5 lawyers will argue, do closing arguments, and I'll
6 read to you the Charge, which is like the packet that
7 you take back, kind of an instruction manual for the
8 jury, okay?

9 A. (Nods head.)

10 Q. Jury goes back there, deliberates and they
11 decide whether the State's proven beyond a reasonable
12 doubt that this Defendant committed the offense of
13 capital murder as alleged, okay?

14 A. Yes, sir.

15 Q. If the -- if the jury finds this Defendant
16 not guilty, that's the end of the case. If the jury
17 finds the Defendant guilty of capital murder, then we
18 go on to the second part of the trial, that is, the
19 punishment phase.

20 Now, were you asked to assess punishment
21 in that P.I. case that you sat on?

22 A. No, they -- we found him not guilty.

23 Q. Okay. Well, see, if you found him not
24 guilty -- if you find this Defendant not guilty,
25 that's the end of the case.

1 In the second phase of that trial there
2 would be -- the jury would have been asked to assess a
3 punishment. And I believe the punishment for that
4 offense is up to a \$500 fine, okay?

5 A. Yes, sir.

6 Q. There's all kinds of different offenses, and
7 there's all different kinds of levels. But, in any
8 event, when you get to the end of the trial and the
9 jury is -- is asked to assess punishment and they get
10 to that point, they assess the punishment.

11 Capital murder's a little different,
12 okay? In capital murder trials, if Defendant's found
13 guilty of capital murder by the jury, then you go to
14 the second phase, but you don't say life or death,
15 okay, because those are the two things that can happen
16 if he's found guilty, life in prison, or death, death
17 penalty, okay?

18 But you don't write death, you don't
19 write life, you answer questions. First question's
20 right there. "Is there a probability the Defendant
21 would commit criminal acts of violence that would
22 constitute a continuing threat to society?" Okay?
23 And then the jury would be asked to answer that yes or
24 no, all right? Let me step down here.

25 After that question's answered, then the

1 swear that you will render a true verdict based upon
2 the law and the evidence presented to you," and the
3 jury will say yes, okay?

4 A. Yes.

5 Q. What I need to know from you is, could you
6 take that oath?

7 A. Yes, sir.

8 Q. Okay. That is, you could take the oath to
9 sit and listen to the evidence and determine whether
10 the State's proven their case, at least on the guilt
11 or innocence first -- part first beyond a reasonable
12 doubt? You could do that?

13 A. Yes, sir.

14 Q. And then you could truthfully, if -- if, and
15 that's a big if, if the Defendant's found guilty of
16 capital murder, you could truthfully answer these two
17 questions?

18 A. Yes.

19 Q. Okay. Because some people say, "Well, you
20 know, I can't do that, because I can't -- I can't
21 participate in something that could lead to the death
22 penalty." Or some people say, "You know what, if he's
23 found guilty of capital murder, I don't care what any
24 of this other stuff is, they're automatically going to
25 get death." But that's not you.

1 jury would answer this question, "After taking in
2 consideration all of the evidence, including the
3 circumstances of the offense," which is the first part
4 of the trial, the guilt or innocence phase, the crime
5 itself, "the Defendant's character and background and
6 the personal moral culpability of the Defendant, is
7 there sufficient mitigating circumstance or
8 circumstances that warrant a sentence of life in
9 prison, rather the death sentence be imposed?"

10 So, basically, taking into the -- the
11 facts that have come in in the first part of the case
12 and that you may hear on the second part of the case
13 other things. Maybe you'll hear about his background.
14 Is he a good guy, bad guy? Has he had a bad criminal
15 history? Is this his first offense? You know, all --
16 there can be all kinds of mitigating facts, that is,
17 things that are in his favor; and then there may be
18 things that are aggravated, things that are presented
19 against him. And then you would -- you would answer
20 this, that is, you, the jury, would answer yes or no
21 to this question. You understand?

22 A. Yes, sir.

23 Q. All right. At the beginning of this trial,
24 those people that are selected, I am going to give an
25 oath to, and the oath is going to be, "Do you solemnly

1 A. No, sir.

2 Q. All right. You would -- you would -- you
3 would truthfully answer those questions and consider
4 all of the evidence presented to you.

5 A. Yes, sir.

6 Q. Okay. All right. Let me -- Mr. Skurka, let
7 me just -- I'm going to take one second. Don't move.
8 I'll be right back, okay, then I'm going to turn it
9 over to Mr. Skurka.

10 (Brief pause in proceedings.)

11 THE COURT: All right. Mr. Skurka, go
12 ahead.

13 MR. SKURKA: Thank you, Judge.

14 VOIR DIRE EXAMINATION

15 BY MR. SKURKA:

16 Q. Good afternoon, Mr. Dicus, how are you today?

17 A. Pretty good.

18 Q. As the Judge introduced me, my name is Mark
19 Skurka. I'm a first assistant district attorney, and
20 with me is Geordie Schimmel. He's the assistant D.A.
21 that's assigned to this court, so he'll be assisting
22 in the presentation of the evidence in this case.

23 What I want to start by telling you
24 there's no right answers or wrong answers to this case
25 -- these questions that we propose to you, we just

1 need -- kind of need to know what your feelings are
2 about some of the issues in this case. And we've got
3 your questionnaires, so we know most of what you're
4 thinking about, but we're probably going to follow up
5 on a few things, if that's all right, okay?

6 A. Yes, sir.

7 Q. I'm going to start off by asking you about
8 the death penalty. How do you -- in general terms,
9 how do you feel about the death penalty?

10 A. Well, I figure they deserve it, they can get
11 it. If they don't deserve it, they don't get it.

12 Q. That's a pretty simple way to answer it,
13 right? If the evidence is there and it should be that
14 -- given, then you give it. But if the evidence is
15 not there, they shouldn't be given it, they should be
16 given maybe a life sentence. Is that pretty much how
17 it sums up?

18 A. Well, if -- if the evidence is not there,
19 they should be off, I mean, if the evidence --

20 Q. That's not guilty.

21 A. Yes, sir.

22 Q. But then if the evidence -- even if they're
23 found guilty, though, you understand it's not
24 automatically death, it's --

25 A. Oh, no.

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1 Q. -- death or life imprisonment. You follow me
2 on that, too, --

3 A. Yes, sir.

4 Q. -- correct? What was your first reaction
5 when you heard that you were going to sitting on this
6 kind of case? You remember that day where we had all
7 those people in the room and most people didn't know
8 what they were here for till the Judge came out and
9 said, "Look, this is capital murder case. You might
10 have to consider the death penalty in this case with
11 this Defendant." Tell me what your first reaction
12 was? What's the first thing hit your mind when you
13 heard it was that kind of case?

14 A. Well, you see them on -- sometimes you see
15 them on T.V., but I -- I didn't really think about it
16 a whole lot.

17 Q. So it didn't bother you one way or the other
18 that you were going to be picked on this type of case?

19 A. No, sir, I didn't -- I didn't think I would
20 be here today, so...

21 Q. Why?

22 A. I don't know, I just didn't.

23 Q. But you didn't think one way or the other
24 about being -- making that decision.

25 A. No, sir.

1 Q. It's a far cry from like a public
2 intoxication case --

3 A. Yes.

4 Q. -- over in municipal court. And, you know, I
5 -- I watch the jury, and sometimes I see them and, you
6 know, some of them go, "Oh, my gosh, I can't believe I
7 got this kind of case," and some people are going
8 like, "Gosh, can you believe this? I can't do that,"
9 and then some people go, "Well, you know, I better
10 listen a little closer to what the Judge is saying,
11 this is a pretty darned important case." Is that kind
12 of how you felt about it?

13 A. Yes, sir. I listen to everything.

14 Q. Okay. And that's what we want you to do
15 because the Judge takes it seriously, we take it
16 seriously, the Defense takes it seriously, and we need
17 jurors that are going to -- who are willing to sit
18 here and make a decision on this case and follow
19 through with that decision.

20 How do you feel about being part of -- of
21 a jury that may have to make that ultimate decision?

22 A. I wouldn't have a problem with it.

23 Q. Some people -- I ask that question because
24 some people will tell me, "Hey, Mark, I believe in the
25 death penalty, it's a good law. I'm glad we have it

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1 in Texas, it's a good law," and then I say, "Okay. Do
2 you want to be on a jury to actually make that
3 decision," and they go, "Oh, no, not me. Let somebody
4 else do that."

5 Do you feel that way at all, or do you
6 think that's part of your civic responsibility to do
7 whatever, you know, the Judge instructs you to do or
8 follow -- carry out the law?

9 A. I figure it's our responsibility.

10 Q. Okay. And that's what a lot of people think.

11 They think, "I got called for duty -- jury duty. I
12 got to do my best." Probably, like you just did in
13 your other case in the municipal court, but some
14 people say, "This isn't the case for me." And it's
15 okay, we just -- we just need to know. Some people
16 say, "Well, I got religious convictions and I can't do
17 this because my church says no." And some people say,
18 "Well, no, ethically, I just don't think I can do it."
19 And if they feel that way, that's okay, it's just we
20 need to know what's going on.

21 But you won't have a problem making that
22 decision?

23 A. No, sir.

24 Q. When we talk about making a decision, we're
25 not talking about some other deal, you know, something

1 you read about in the paper or see on the news, that's
2 him, right there. Look at him, that's John Henry
3 Ramirez. He's charged with capital murder, and -- and
4 there's going to be a time in this trial where I'm
5 going to ask the jurors to find him guilty, and if the
6 evidence sustains that, that he should be given the
7 death penalty and the question should be answered a
8 certain way. I'm going to ask them to do that. I
9 mean, I've told you--all since day one, the State's
10 seeking the death penalty.

11 Looking at him, do you think you can
12 carry through that if it comes to that point?

13 A. Yes, sir.

14 Q. I'm going to ask you the other way, now. If
15 you think that the evidence is such that he's not
16 guilty, can you vote for that, too?

17 A. Yes, sir.

18 Q. And if you think the evidence is such that he
19 may be guilty but maybe he should get a life sentence
20 based on the evidence, can you do that?

21 A. Yes, sir.

22 Q. So you haven't closed your mind to anything,
23 right? You're going to wait till you hear everything.

24 A. Yes, sir.

25 Q. And that's all we can ask you to do.

1 ultimate facts are or the ultimate decision is,
2 correct?

3 A. Yes, sir.

4 Q. Okay. Now, the Judge has told you that this
5 is a capital murder because it's a murder plus
6 robbery. Basically, that means you have to have
7 something in addition to the killing of someone,
8 unless it's something like, you know, killing a police
9 officer on duty, killing a child under six, you know,
10 multiple murders. But if you kill somebody while
11 you're robbing, raping, burglarizing or kidnapping
12 them, you could get the death penalty. They have to
13 both be kind of combined. You can't just have murder
14 and you can't just have robbery, but if you have
15 murder in the course of committing robbery or
16 attempting to commit robbery, you can be eligible for
17 the death penalty.

18 And robbery, I think the Judge is going
19 to give you instruction. Robbery basically means
20 taking property by force or threats of force, you
21 know. If I just take something, that's theft. But if
22 I take something and, you know, hit you over the head
23 with it that's robbery because I've used force against
24 you to take the thing.

25 But it doesn't necessarily mean it has to

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1 Sometimes people look at a person and they go, "Well,
2 gosh, you know, he looks so young," or "He doesn't
3 look like that bad a guy." Would you agree with me
4 that you really can't judge somebody on how they look,
5 but you should judge them on what they did?

6 A. Can't judge people by how they look.

7 Q. That's exactly right. And -- and sometimes
8 people say, "Well, gosh, you know, you know, maybe
9 he -- he's younger than me, so maybe I shouldn't
10 give -- I should give him a break because he's younger
11 than me." Would you agree -- the law says, basically,
12 the death penalty -- you can't have the death penalty
13 for kids -- for people under 18, for kids, but it
14 doesn't say, if there's a difference between they're
15 23, 33, 43 or 53. Do you understand that?

16 A. Yes, sir.

17 Q. Does that make sense to you that a person
18 over 18 is responsible for what they've done?

19 A. Yes, sir.

20 Q. Okay. In other words, they -- by that age
21 they should know the difference between right or wrong
22 and, you know, how to obey laws and stuff, correct?

23 A. Yes, sir.

24 Q. So you agree with me that age and appearance
25 may not really have anything to do with what the

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1 be a completed robbery. For example, a guy goes into
2 a bank, holds up the teller, "Give me all your money,"
3 takes the money bag, starts walking out the door and
4 the police catch him right before he gets out the
5 door. He can't say, "Well, gosh, I'm not guilty of
6 robbery because I didn't get away with it. I didn't
7 really get to keep the money." That's -- that's not
8 right because if you're in the course of committing
9 robbery or attempting to commit robbery, you're still
10 guilty of robbery. You follow that?

11 A. Yes, sir.

12 Q. That makes sense, right? You can't just say
13 that. Well, in this case, unlike most cases -- well,
14 in every criminal case, there's two parts of the
15 trial. The first part is did he do it or not, is he
16 guilty or not guilty? You listen to the evidence
17 about what happened that day and hear all the
18 testimony and decide is he guilty or not guilty? Then
19 you -- if you find that he's not guilty and there's
20 not enough evidence, then you vote not guilty and the
21 case is over with.

22 The second part of the trial is the
23 punishment part. If you have find a person guilty,
24 you go to the second part of the trial and you might
25 get to hear additional evidence. You might get to

1 hear where in the first case, the first part of the
2 trial, you only heard about what happened that day.
3 In the second part of the trial you might get to hear
4 about a person's background to help you make a
5 decision on what kind of punishment he gets. And,
6 probably, you want to hear something like that. You
7 want to know, "Hey, has he been to prison ten times
8 before or has he never been to prison? Has he, you
9 know, been an Eagle Scout and made straight A's in
10 school or he's always been in trouble with the law,"
11 you see what I'm saying? You might get to hear that
12 and make that decision based on that.

13 And then once you make all that decision,
14 once you hear all the evidence, you answer two
15 questions. And the questions are right there on the
16 board in front of you, and let's look at the first one
17 down here, which basically says, "Is there a
18 probability that the Defendant would commit criminal
19 acts of violence that will constitute a continuing
20 threat to society?" And there's three words there --
21 three phrases I want you to key in on that. The first
22 one is "probability," then "criminal acts of
23 violence," and then "society."

24 This is how it works: Say in our
25 scenario that you've found them guilty of capital

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1 murder. You've now heard additional evidence about,
2 you know, good or bad background or whatever, then you
3 have to answer this question that the Judge poses.
4 "Is there a probability," and probability basically
5 means more likely than not, is it probable that the
6 Defendant will commit? And unless you have a crystal
7 ball, there's no way you can tell for sure what's
8 going to happen, right? And it doesn't tell me I have
9 to prove that. It doesn't say, "Is it for certain
10 he's going to do these things?" It just says, "Is
11 there a probability?"

12 Now, what do you think you could base
13 that probability on?

14 A. Sometimes their past acts or --

15 Q. That's exactly right. Sometimes their past
16 acts, maybe the act that they're on trial for, maybe
17 anything, okay? But I like to tell people, I don't
18 have a crystal ball, but sometimes you can predict the
19 future by what's happened in the past. Not a hundred
20 percent, but the law doesn't require me to prove it a
21 hundred percent. It just says is it probable that the
22 Defendant would commit criminal acts of violence?

23 And some people say, "Well, gosh, do you
24 think he's going to murder somebody, again, or has he
25 learned his lesson? Maybe he'll never murder somebody

1 again. The law doesn't say you have to murder
2 somebody again, it just says "criminal acts of
3 violence." That could be anything. That could be
4 assault, you know, breaking something, hurting
5 somebody, whatever it is. So it doesn't mean that you
6 necessarily think the guy's going to murder somebody,
7 okay?

8 A. Yeah.

9 Q. And then the last thing said, "will
10 constitute a continuing threat to society." You've
11 probably heard something like that before, continue --
12 "He's a threat to society," you know, "He'll continue
13 to be a threat to society." Well, some people, again,
14 tell me, "Well, gosh, why do you have -- why do you to
15 put him to death, then? Why don't you just lock him
16 up in prison for life and that way he won't be able to
17 hurt anybody, he won't be a continuing threat to
18 society?"

19 And I had to stop them and say, "Wait a
20 minute, who else is in a prison?"

21 A. People.

22 Q. People. Guards, other inmates, maybe people
23 that work at the jail, like medical people or
24 maintenance people, or whatever. So, it's not like we
25 put people on a desert island and they'll never see

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1 people again, or never ever see society, again. So
2 would you agree with me that prison is still part of
3 the society, correct?

4 A. Yes, sir.

5 Q. I mean, you've lost some rights, but you're
6 still interactive with people. Have you ever heard
7 about that happening, where maybe an inmate attacked
8 another inmate and hurt of them, or, you know, inmate
9 hurt a guard or killed a guard, God forbid?

10 A. Yes.

11 Q. You've heard that, right?

12 A. Yes, sir.

13 Q. So just because you put somebody in prison,
14 would you agree with me that doesn't mean they're not
15 going to ever be able to hurt anybody because they can
16 hurt somebody, right?

17 A. Yes, sir.

18 Q. Okay. But sometimes people say, "Well,
19 society is not including prison." Prison does include
20 society, okay? So that's the first question, "Is
21 there a probability that he commit criminal acts of
22 violence that will constitute a continuing threat to
23 society?" In other words, is he going to be a danger
24 in the future? And you answer that question yes or no
25 based on the first part of the trial, you know, what

1 he did this day, and any background information you
2 may have.

3 Then you go to the second question. And
4 the second question here is what's called the
5 "Mitigating circumstance question." Mitigation is a
6 word that we use, and lawyers toss it around, but not
7 many people know what it is. I know I didn't know
8 what it was before I went to law school. But
9 mitigating basically means anything that would lessen
10 or make less severe the punishment. In other words,
11 he did the crime, but is there any reason it should be
12 a less sentence or less severe sentence? It's also
13 defined as "Anything that reduces the Defendant's
14 moral blameworthiness."

15 Okay. What does that mean? Let's quit
16 talking like a lawyer and start talking like a -- in
17 real life. Well, have you ever heard of something
18 like, "Well, maybe he did this, but there was
19 extenuating circumstances why he did it, or maybe
20 there was some other kind of reason why he did it"?
21 That's kind of what this looks like because you're on
22 a jury, right? You have to decide is there any reason
23 that I should lessen his sentence and make it life,
24 rather than death? Is there any reason that we should
25 lower it or make less severe his sentence?

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1 Well, let me give you an example. Say
2 you're on two burglary cases. They're separate
3 burglary cases and both people are convicted of
4 burglary. So you're going in there and you're
5 thinking, "Well, gosh, both people are guilty of
6 burglary. I don't burglars, they break into
7 somebody's house and steal something. I'm going to
8 give them the maximum sentence," and you think that
9 before you have hear any evidence.

10 Then the evidence comes along.

11 In the first trial, the burglar, you find
12 out, has kicked in the door, broken in the door,
13 ransacked the house, gone through everything, stolen
14 money, jewelry, T.V., V.C.R., all the stuff. And then
15 he also tore up the house while he was in there,
16 breaking things and tearing up the furniture and
17 ransacking the place. And then you find out his
18 background is he's been to prison five times before
19 for burglary. Okay, that's one scenario.

20 Now, look at this second burglar. The
21 second burglar is guilty of burglary because he went
22 in somebody's house and stole something without
23 permission, but then you hear the facts in that case.
24 And the background in this case is a little different
25 from the first one. In this case, the second case, he

1 didn't break in and kick a door down or break a window
2 to get in, the -- excuse me, the back door was
3 unlocked. Even though the house had jewelry, money,
4 T.V., V.C.R. and stereos, he didn't take any of that
5 stuff. What he did was sneaked into the kitchen,
6 stole a loaf of bread and some food, and took it to
7 feed his kids who were hungry because he lost his job
8 and he needed food for his kids.

9 And then you found out his background is
10 he hadn't been to prison five times before. This is
11 the first time he's ever even been arrested for a
12 crime, ever been charged with a crime, like a
13 first-time offender.

14 Wow, different facts, right? In first
15 case, those are pretty bad facts, right, and those
16 aggravating circumstances. In the second case, those
17 are kind of -- I mean, he's still not supposed to go
18 into somebody's house and steal something, but those
19 are those mitigating circumstances that you might give
20 him a lesser sentence. I mean, would you really
21 punish those guys equally?

22 A. No, sir.

23 Q. Of course not. It wouldn't make sense,
24 because of these extenuating, aggravating or
25 mitigating circumstances. In the first case, well,

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1 gosh, he's been to prison five times before, he tore
2 up the place, he stole everything, kicked it in,
3 that's a lot worse than the second guy. Still against
4 the law, but, you know, you're not going to be that
5 bad to that guy. You're probably going to give him a
6 less sentence than the first guy.

7 And that's what that question is about,
8 Mr. Dicus. The Judge says, "Okay, you found him
9 guilty of capital murder, you think he's a continuing
10 threat to society, but before you vote for the death
11 penalty take into consideration all of the evidence.
12 Take the big picture in, including, you know, what
13 happened that day, the day of the offense and the
14 circumstances around that, you know -- the Defendant's
15 character and his background." You know, that's what
16 we're talking about. Does he have a criminal history,
17 does he not have a criminal history? Is he a good
18 guy, is he bad guy, and the personal moral culpability
19 of the Defendant. Is there sufficient, is there
20 enough mitigating circumstance or circumstances to
21 warrant that a sentence of life imprisonment, rather
22 than the death sentence be imposed?

23 In other words, it's kind of like a
24 check-all question. It looks like he's heading for
25 the death penalty because you found him guilty and you

1 think he's a continuing threat to society, but before
 2 you impose the death penalty, you have to look at
 3 everything and kind of check -- the jury has checked,
 4 say, "Is there any reason we should give him a life
 5 sentence or not?" If there is, there is. If there
 6 isn't, there isn't.

7 Now, what is a mitigating circumstance?
 8 I can't tell you. It's up to the jury to decide what
 9 -- what it is. Some people may say, "Hey, that's a
 10 mitigating circumstance," and some people may say,
 11 "No, that -- that really shouldn't do it." Say, for
 12 example, you find out all these things and you find
 13 out the guy was a Eagle Scout in school and he made
 14 straight A's in school when he was in high school.
 15 Some people may say, "Well, gosh, we should give him a
 16 break because of that, because he made good grades in
 17 school." Other people may say, "Hey, sorry, I don't
 18 care if he made good grades or not ten years ago.
 19 You've done this crime, you've got this background,
 20 you have to suffer the consequences of that."

21 You see how I'm saying? It can go either
 22 way. Just because it's a mitigating circumstance, a
 23 possible mitigating circumstance, doesn't mean you
 24 have to lower the sentence automatically. Remember,
 25 we're talking about that no automatic stuff. It's the

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1 same thing. Just because you don't automatically give
 2 the death penalty, you don't automatically give a life
 3 sentence because you hear something like that. You,
 4 the jury, gives what effect it wants to on that kind
 5 of case.

6 So it's -- it's -- and then, if you find
 7 the circumstance, is it enough, is it sufficient? You
 8 have to kind of do a balancing test. Okay, you've
 9 been to prison five times before and he shot the guy
 10 29 times and, you know, he tore up the place and --
 11 but he was an Eagle Scout, you know? Does that out --
 12 does an Eagle Scout out-balance all those other
 13 things?

14 A. No.

15 Q. Probably not in that case, but it's up to
 16 you. The Judge can't tell you, "Hey, you have to
 17 lower the sentence right away because you've heard
 18 this." That's up to the jury to decide. But the
 19 Judge does say, "Hey, you have to think about
 20 everything. You have to consider it." You know, it
 21 may carry weight with you, it may not carry wait with
 22 you, but you just can't close your mind and say,
 23 "Okay, because I answered that question, he
 24 automatically gets the death penalty." This is kind
 25 of a check on it. Is there a mitigating circumstance

1 and is there enough? And -- and that kind of makes
 2 sense, right, the mitigating circumstance because
 3 there might be exceptional circumstances where he
 4 doesn't deserve the death penalty. On the other hand,
 5 the jury's free to fit -- fit -- use that the way they
 6 see fit.

7 Speaking of that, the Judge may also give
 8 you this law: The law says voluntary intoxication is
 9 not a defense to crime. "Voluntary intoxication." In
 10 other words, if you go get yourself drunk or stoned or
 11 high on drugs and you commit a crime, is that an
 12 excuse for the crime?

13 A. No.

14 Q. No, it's not. Voluntary intoxication is not
 15 a defense to crime, but it could be a possible
 16 mitigating circumstance where you give a less
 17 sentence. See what I'm saying? Probably an example
 18 might be used is if you go out and kill somebody, you
 19 just want to kill them and shoot them in the head five
 20 times, that's murder, right? But if you drive drunk
 21 and kill them in a car, that's called "intoxication
 22 manslaughter," because you weren't really aiming to
 23 kill somebody, but you were drunk, so you're going to
 24 get a less sentence than that.

25 It can be almost any type of thing, and

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1 -- but could it be a mitigating circumstance? Yes.
 2 Maybe it's not. It's up to you. And sometimes jurors
 3 say, "I don't care if he was drunk or high on drugs,
 4 he still did this crime and he's got to pay for it,
 5 you know?" And some people say, "Well, maybe we
 6 should give him a break for that." It's up to you as
 7 a juror, okay?

8 Do you understand that question now?

9 A. Yes.

10 Q. Does the scheme kind of make sense to you,
 11 how we kind of go through the process? It's a lot
 12 more involved than you probably thought, at first,
 13 because a lot of people think, "Well, I just vote for
 14 life or death," and you don't. And you answer those
 15 questions. And I think they're pretty fair questions,
 16 right?

17 A. Yes.

18 Q. You want to know what the guys's background
 19 is and is there any reason to give him a less
 20 sentence, and if there isn't, there isn't. If there
 21 is, there is. Okay?

22 A. Yes, sir.

23 Q. Okay. So the -- some last minute things I
 24 want to cover you with is, you understand that -- you
 25 can listen to all the evidence and would you consider

1 both possible punishments, death or life in prison,
 2 right --
 3 A. Yes.
 4 Q. -- depending on what the evidence is.
 5 The law also says that he's been
 6 indicted, but that you can't hold that against him.
 7 Just because a person's been indicted or charged with
 8 a crime doesn't mean he's necessarily guilty. And the
 9 best example I can tell you is this case you had in
 10 muni court, right? I'm assuming a police officer
 11 thought he was intoxicated, right, and charged him and
 12 wrote him a ticket. Did that mean he's automatically
 13 guilty?
 14 A. (Shakes head.)
 15 Q. No. It's up to the guy to either plead
 16 guilty or the Judge or jury find him guilty. And so,
 17 just because you're charged with something doesn't
 18 mean you're guilty. And the same thing happens here,
 19 whether it's P.I. or capital murder. You understand
 20 that he's not -- do you believe that he's not guilty
 21 right now?
 22 A. Yes, sir.
 23 Q. All right. And that's called "the
 24 presumption of innocence." As he sits here right now
 25 he's presumed innocent. Does it mean he is innocent?

1 A. Yes, sir.
 2 Q. Okay. The next one is beyond a reasonable
 3 doubt. Beyond a reasonable doubt is not defined for
 4 you by the Judge but I can tell you it doesn't mean
 5 beyond all doubt or any doubt, a shadow of doubt,
 6 something like that. And in your questionnaire you
 7 put something about, "If a person is found guilty
 8 without a doubt, then they should be given the death
 9 penalty." Remember, it's not without a doubt, it's
 10 without a reasonable doubt. And I know we're kind of
 11 splitting hairs, here, but when you say, "without a
 12 doubt," that means a hundred percent, I have to prove
 13 it a hundred percent, but the law doesn't require me
 14 to prove it a hundred percent, it says beyond a
 15 reasonable doubt.
 16 Say, for example, you're a juror in a
 17 murder case -- I'm sorry, a bank robbery case. And
 18 you're sitting there and -- and the first witness is a
 19 teller who says, "That's the guy who robbed me at the
 20 bank. I recognize his face. That's him. And when he
 21 robbed me, he was wearing a yellow shirt." Then
 22 another teller comes up on the stand and that teller
 23 says, "That's the guy who robbed my other friend, the
 24 teller. That's him. I recognize him. I saw him
 25 there at the counter and he was wearing a yellow

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1 No. It just means that, at this point, he's presumed
 2 innocent. You have to think he's innocent because the
 3 State hasn't proven the case to you beyond a
 4 reasonable doubt. You follow that, right?
 5 A. Yes, sir.
 6 Q. So you don't have any preconceived notions
 7 that he's sitting there, he must have done something,
 8 he's guilty. You can't do that, can you?
 9 A. I don't have enough information to make that
 10 decision.
 11 Q. But you have to start him with being
 12 innocent. We have to prove him guilty, right?
 13 A. Yes, sir.
 14 Q. This is -- I know, some countries they
 15 actually start you guilty and you have to prove your
 16 innocence. This is America. You're innocent until
 17 proven guilty.
 18 The law also says he can testify if he
 19 wants to but he doesn't have to if he doesn't want to.
 20 That's called the Fifth Amendment. Remember, the
 21 Judge is talking about that?
 22 A. Yes, sir.
 23 Q. And you cannot hold that against him if he
 24 doesn't testify. Will you be willing to follow that
 25 law?

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1 shirt." Then you hear a next witness who's the bank
 2 guard who came upon the robber as he was leaving the
 3 bank out on the street on the sidewalk outside, and he
 4 says, "That's him. That's the guy I saw carrying out
 5 the bag of money who had just robbed our bank. That's
 6 him. I recognize him. And he was carrying a gun and
 7 a -- and a bag of money and he was wearing an orange
 8 shirt that day."
 9 You got a little bit of a discrepancy,
 10 right? Two people said yellow, one person said
 11 orange, but three people said, "That's him. I
 12 recognize his face." In other words, you may have a
 13 doubt about what color shirt he was wearing, but is
 14 there a doubt that he's the one that robbed it?
 15 Probably not, based on those facts. You see what I'm
 16 saying? The law doesn't require me to prove something
 17 to you a hundred percent, without a doubt or any doubt
 18 or shadow of a doubt.
 19 Can you follow that, then?
 20 A. Yes, sir.
 21 Q. How long ago was this case when you were
 22 convicted of a U.C.W?
 23 A. In '04.
 24 Q. '04. And do you mind me asking how they --
 25 they found the gun in your truck? Were you pulled

1 over for something?

2 A. Yeah, I was leaving a fishing tournament, and

3 the highway patrol pulled me over and he found a gun

4 in my truck.

5 Q. Uh-huh. Did you ever -- is that -- was the

6 gun just for personal protection?

7 A. Yes.

8 Q. Okay. And -- because you know there's a

9 hunting and fishing exception to that sometimes

10 because sometimes people carry guns to shoot sharks or

11 something when they do that.

12 A. No, it's a -- I have it in the -- well, I

13 used to carry it in my truck because I terminate a lot

14 of people with my job, never know who you're going to

15 run into sometimes, so...

16 Q. Oh, my gosh. So you did need it for personal

17 protection.

18 A. Well, I just wanted to have it, just in case.

19 Q. Uh-huh. Do you have a concealed weapon

20 permit now?

21 A. No, sir. I don't have a gun anymore. I

22 learned my lesson.

23 Q. Well, that's an unfortunate situation. But

24 you understand the law is you can't just -- now they

25 have concealed handguns, and stuff, but you -- there's

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1 the reasons for the law. Do you have any kind of ill

2 feelings about law enforcement or the police for

3 enforcing the law?

4 A. No, sir.

5 Q. All right. Do you think you can be a fair

6 juror in this case?

7 A. Yes, sir.

8 Q. Will you listen to everything and make a

9 decision?

10 A. Yes, sir.

11 Q. And will you be able to follow through that

12 decision no matter what it is?

13 A. Yes, sir.

14 Q. Okay. And I think that's all the questions I

15 have of you, Mr. Dicus. Do you have any question of

16 me, that maybe I didn't explain something very well?

17 A. No, sir.

18 MR. SKURKA: Thank you so much for your

19 time. I'll let the other lawyers talk to you now.

20 MR. GARZA: May I proceed, Your Honor?

21 THE COURT: Yes.

22 MR. GARZA: Thank you.

23 VOIR DIRE EXAMINATION

24 BY MR. GARZA:

25 Q. Good afternoon, Mr. Dicus. My name is Ed

1 Garza, as I had previously introduced myself to the

2 large group when -- that you were in when we first

3 asked you to come in to fill out these questionnaires.

4 This is Mr. Grant Jones. He's my Co-Counsel next to

5 me, and our client, John Henry Ramirez.

6 Sir, you've indicated in your

7 questionnaire that you don't know anything or have

8 heard anything, either through newspaper, counsel or

9 the broadcast media about this case; is that correct?

10 A. Uh-huh.

11 Q. You never heard about what happened?

12 A. (Shakes head.)

13 Q. Don't have any recollection of seeing --

14 A. The only thing I know is I think I saw in the

15 paper when he got arrested but they said they was

16 looking for him for awhile, but that's about the only

17 thing I ever heard.

18 Q. Okay. Anything about that concern you?

19 A. No, sir.

20 Q. Did you develop or conceive any sort of a

21 opinion about that when you read it?

22 A. No, sir.

23 Q. At all?

24 A. No.

25 Q. Do you have any preconceived notions at all

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1 about our client's -- about our client's innocence

2 here this morning -- this afternoon?

3 A. I figure everybody's innocent until you get

4 proven guilty.

5 Q. What does the presumption of innocence mean

6 to you?

7 A. Well, my case with the gun, I had the gun in

8 the truck, you know, so I knew I was -- but it was

9 loaded and there was one in -- I mean, I didn't have a

10 leg to stand on, so, I mean...

11 Q. Well, I guess, in that case, it would be easy

12 to say you were a witness to your own violation of the

13 law. --

14 A. Yes, sir.

15 Q. -- right? It was effecting you --

16 A. (Nods head.)

17 Q. -- at the time.

18 A. I was the only one effected, except for the

19 fellow that stopped me, so...

20 Q. Okay. But as far as the presumption of

21 innocence as a juror, what is your concept of that, or

22 as a prospective juror?

23 A. I figure everybody's innocent until you get

24 shown they're not, you know? I mean, I don't know how

25 to exactly say how somebody's innocent or guilty,

1 without -- without knowing, but, I mean, I ain't --
2 I'm not a mind reader, but I wasn't around when
3 anything happened, so I couldn't say one way or the
4 other, but...

5 Q. But do you agree with the concept that
6 everyone is presumed innocent, until shown --

7 A. Oh, yes.

8 Q. -- or proven otherwise?

9 A. Oh, yes, sir. I believe that.

10 Q. So, right now, if I asked you to cast a vote
11 as to my client's guilt or innocence, what would your
12 vote be?

13 A. I couldn't give you one.

14 Q. Why not?

15 A. Because I don't -- I don't have any
16 information whether he did or didn't do what they
17 said.

18 Q. Okay. And that means, to me, you don't
19 understand the presumption of innocence. Let me
20 re-explain it to you again.

21 As my client sits there today, this
22 morning -- this afternoon, he's presumed innocent. --

23 A. Yes, sir.

24 Q. -- is he not?

25 A. Yes, sir.

1 Q. Okay. So right now, if for some reason the
2 Judge were to direct you to render a verdict in this
3 case, what would your verdict be?

4 A. Innocent.

5 Q. Do you understand what I'm saying now?

6 A. Yes, sir. Now I understand.

7 Q. Because I need to know that, otherwise you're
8 making me very nervous.

9 A. I apologize for that.

10 Q. Okay.

11 A. But I understand now, sir.

12 Q. Okay. How do you feel about the death
13 penalty?

14 A. Well, I guess if -- if you deserve it, you
15 should get it. If you don't deserve it, you shouldn't
16 get it. I mean, it's something if it's -- if it's --
17 if you're found needing it, then you should have it.
18 If you're found not having it -- needing it, then you
19 shouldn't have it.

20 Q. In -- in your mind, what would be the best
21 argument for the death penalty?

22 A. Well, if -- I guess if somebody killed
23 somebody and I guess they could get back what they
24 gave, but that would be about what I would think about
25 it.

1 Q. You believe in an eye for an eye.

2 A. Well, I don't know if it would be an eye --

3 Q. Well, you tell me --

4 A. -- for an eye.

5 Q. You tell me how you believe.

6 A. I just figure if you made your bed you ought
7 to sleep in it.

8 Q. Okay.

9 A. And I don't know if it's an eye for a eye, or
10 -- but...

11 Q. Now, the Judge, I'm sure may have tried to
12 explain it to you earlier but, in Texas, the
13 commission of a murder does not -- our law does not
14 prescribe the death penalty for that kind of a -- for
15 that kind of an offense, okay?

16 A. Yes, sir.

17 Q. In order for the death penalty to be
18 considered or assessed as a punishment, it has to be a
19 murder plus, like the Judge tried to explain to you.
20 It has to be a murder, coupled with the commission or
21 in the course of committing yet another very serious
22 crime, whether it's a robbery, a kidnapping, a
23 burglary or something of that nature, or if you kill a
24 police officer or a fireman on the -- in the course of
25 his duty, or a child under six years of age, okay?

1 There's sort of a laundry list under which capital
2 murder fits under. And -- and only in those types of
3 cases can you or will you ever be allowed to consider
4 the death penalty as a punishment.

5 Do you -- do you understand the
6 difference?

7 A. Yes, sir.

8 Q. Okay. Because I need to know that you do
9 understand the difference or is there some -- or do
10 you have some preconceived notion already where you
11 have made your mind up that, no matter you hear, if my
12 client gets found guilty of murdering somebody, and
13 maybe doesn't get found guilty or you don't feel
14 like -- well, let me retract that. Are you -- are you
15 the kind of person that leans for the death penalty
16 before you would consider life?

17 A. No, sir. I'm -- I don't make any decisions,
18 till I -- I mean, I'm a -- I guess I got an open mind,
19 you know.

20 Q. Okay. Well, let me ask you this, I'm just --
21 kind of need to know. In your questionnaire when you
22 were asked on a scale of one to ten how strongly you
23 believe in the death penalty, you indicated -- one
24 being the least, ten being the strongest, you
25 indicated number nine.

1 A. Yes, sir.

2 Q. What does that mean?

3 A. I mean, if -- I got an open mind, but if I

4 get -- I guess when I make a decision, I could -- I

5 could -- I agree with it, but if it's not the right

6 decision, then I wouldn't agree with it. I don't

7 think every person should be given the death penalty,

8 but if -- I could -- I mean, I agree with it, but --

9 because some folks need it, but I don't think

10 everybody needs it.

11 Q. Then you also answered to the question, "Do

12 you believe that the death penalty is imposed too

13 often, not often enough, or about right," you

14 indicated "Not often enough." What -- what do you

15 mean by that

16 A. Well, if I was -- if it was me, I wouldn't

17 want to sit somewhere ten years. If I had the

18 death penalty, I would go ahead and get it done.

19 Don't let me sit somewhere ten years. That's what I

20 mean. Sometimes you hear somebody 20 years, 25 years,

21 you know, but I wouldn't want to wait that long. If

22 I'm guilty, let's do it. But, I mean, it's not me,

23 it's -- that was my opinion.

24 What about someone that might be wrongly

25 convicted? Let me give you an example. You've heard

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1 of these cases recently, maybe you read them in

2 newspaper articles, about people being found factually

3 innocent through the use of D.N.A., after they have

4 spent 10, 15, 20 years in jail. There have also been

5 people sitting on death row who have been found

6 factually innocent. Have you heard of that?

7 A. Yes, sir. It was somebody not too long ago,

8 I think.

9 Q. What do you think about that?

10 A. Well, I think he's -- he got pretty bad wrong

11 done to him. He shouldn't have been in jail or found

12 guilty.

13 Q. Yeah.

14 A. But I guess he's lucky he was there 10 or 12

15 years to get out.

16 Q. The appellate process has to sort of take its

17 time, whether you agree with it or not, to make sure

18 everybody's gotten it right.

19 A. Yes, sir.

20 Q. And that's why it's important that we sit

21 here and we talk to you and ask you certain questions,

22 which you might think, "Jesus, why are they asking me

23 such stupid stuff," you know what I mean?

24 A. (Nods head.)

25 Q. It's important.

1 A. Yes, sir. Everything that -- everything in

2 this case has to be important.

3 Q. So we really need to know, you know, whether

4 or not you feel comfortable, we feel comfortable,

5 everybody feels comfortable, whether or not you can

6 sit in proper judgment in this case --

7 A. (Nods head.)

8 Q. -- for everybody concerned.

9 A. Yes, sir.

10 Q. Okay? And is this the kind of case you think

11 you'd like to sit in?

12 A. Well, to tell you the truth, I wouldn't like

13 to sit on no case, but it's my duty, so I got to,

14 so...

15 Q. I mean, you know, I understand you're not

16 jumping for joy, but it's not exactly like winning the

17 lottery either.

18 A. Well, you don't really want to -- I mean, you

19 got to have an open mind, but it's not something you

20 just want to run up to the front of the line for,

21 either.

22 Q. Okay. The reason we've talked about guilt,

23 innocence, punishment, all these kinds of things is

24 because this is the only chance we get to talk to you

25 about it, okay, so we have to talk about all the

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1 possible possibilities, so to speak, okay?

2 A. Yes, sir.

3 Q. And that's why we need to ask you if you

4 understand the presumption of innocence, the State's

5 burden of proof, that they're the ones that have to

6 prove this case beyond a reasonable doubt, beyond a

7 reasonable doubt and what that means, okay?

8 A. Yes, sir.

9 Q. All those concepts? To make sure that you do

10 understand them and that we can rely on those things,

11 based on your answers to our questions, okay?

12 A. Yes, sir.

13 Q. So, I'm going to kind of skip a little bit

14 and then go toward these special issues that we've

15 been discussing, okay --

16 A. Yes, sir.

17 Q. -- and ask you what -- what would be some of

18 the things that you would need to be convinced of in

19 your mind as to our client's future dangerousness,

20 which is Special Issue No. 1.

21 A. Well, I guess you got to look at every person

22 as of their -- of them. And, I mean, if he -- if he

23 was to show me that -- I mean, you -- you can't say

24 just because somebody's bad for a while don't mean

25 they're going to be bad forever, because you -- you

1 still hear about people that change, and so it's -- I
 2 don't -- I guess till you have the information, you
 3 really can't say how you'd make that decision.
 4 Q. And even then you're being asked to sort of
 5 predict, it's no -- it's not a -- it's surely not an
 6 exact science or anything, would you agree with me?
 7 A. Yes, sir. It's not exact.
 8 Q. You're having to, basically, judge human
 9 nature.
 10 A. Yes.
 11 Q. If you can, okay? Or predict the weather, if
 12 you can.
 13 A. Not here you can't.
 14 Q. Okay.
 15 A. But I figure there's a whole lot of brains.
 16 And, if you got 10, 12 brains must be better than one
 17 brain.
 18 Q. That's -- that's a good concept. You might
 19 be able to get it right, that's correct. You might be
 20 able to get it right, and there's some people that are
 21 going to agree with certain things and others that
 22 don't, okay?
 23 So then that brings us down here to this
 24 Special Issue No. 2, where you're being asked to take
 25 into consideration the circumstances of the events,

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1 the Defendant's character, his background. Like
 2 the -- the Defendant's character and background, what
 3 are some of the things that -- you know, what does
 4 character mean to you?
 5 A. What kind of person you are, what you -- what
 6 you've done with your life. I mean, I do refinery
 7 work. You got every kind of character in the world
 8 out there working, so...
 9 Q. Okay. And what about background?
 10 A. Well, I know some guys used to be pretty
 11 sorry fellows and today they ain't too sorry, anymore.
 12 They -- somewhere down the road they changed, so --
 13 but at one time they was pretty sorry individuals, but
 14 today they're not, so... I mean, everybody has --
 15 everybody has his opportunity to change.
 16 Q. Okay. Can you take -- are -- you know, and
 17 it -- and it's going to be up to you, if you're chosen
 18 to be a juror in this case, as to what particular
 19 aggravating circumstances and what particular
 20 mitigating circumstances you're going to be asked to
 21 give effect to, okay?
 22 A. Yes, sir.
 23 Q. And what I want to know is can you give
 24 effect to both of them equally, consciously,
 25 conscientiously and sincerely before you make up your

1 mind?
 2 A. Yes, sir. I don't ever just make a hasty
 3 decision.
 4 Q. Because, you know, some people will walk in
 5 here and say, "Well, geez, man, this case is pretty
 6 heavy. Some gentleman lost his life. And, geez, you
 7 know, I don't care if he came from a bad family, he
 8 came from an ugly background, a terrible background.
 9 I don't care if he was an Eagle Scout. I don't care
 10 if he was an A student. I just can't think of
 11 anything that would make me believe that this guy's
 12 blameworthiness can be lessened by those matters. I
 13 don't even want him breathing the air I breathe."
 14 A. I couldn't think that way. I mean, you got
 15 to -- you got to make the decision that -- I mean, I
 16 don't think I could ever think somebody shouldn't
 17 breathe the air I breathe, you know?
 18 Q. And I guess what we need to know is would you
 19 had consider it, not only the aggravating, but also
 20 the mitigating circumstances before you answer that
 21 question?
 22 A. Yes, sir.
 23 THE COURT: Anything else?
 24 MR. GARZA: No, Your Honor. I'll pass
 25 him.

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1 THE COURT: All right.
 2 MR. SKURKA: No further questions.
 3 THE COURT: Why don't you wait in the
 4 jury room for just a second and we'll be right with
 5 you, okay, Mr. Dicus?
 6 (Venireperson exits courtroom.)
 7 THE COURT: All right. Mr. Skurka?
 8 MR. SKURKA: State will accept this
 9 juror, Judge.
 10 THE COURT: Mr. Garza?
 11 MR. GARZA: We'll exercise our
 12 peremptory, Judge.
 13 THE COURT: All right. Bring him in.
 14 (Venireperson enters courtroom.)
 15 THE COURT: All right, Mr. Dicus, you
 16 were not selected to be on the jury, but we do
 17 appreciate your time and you coming down here. And
 18 we're sorry we didn't get to you before lunch.
 19 VENIREPERSON NO. 30: No problem.
 20 THE COURT: All right. Thank you for
 21 your service. We appreciate it.
 22 VENIREPERSON NO. 30: Thank you.
 23 MR. SKURKA: Thank you.
 24 MR. GARZA: Thank you.
 25 (Venireperson exits courtroom.)

1 THE COURT: Next we got Kenneth Starkey.
 2 THE BAILIFF: He's not here, sir.
 3 THE COURT: He's not here? What about --
 4 we got Diana O'Brien. You-all ready to start that
 5 one?
 6 MR. SKURKA: I'm okay, Judge. I just
 7 want to point out something off the record.
 8 THE COURT: Okay. Off the record.
 9 (Off the record.)
 10 (Venireperson enters courtroom.)
 11 THE COURT: All right. Come on up here
 12 and have a seat.

13
 14 VENIREPERSON NO. 33,
 15 DIANA LOUISE O'BRIEN,
 16 VOIR DIRE EXAMINATION

17 BY THE COURT:

18 Q. All right. You are Diana O'Brien; is that
 19 right?

20 A. That's correct.

21 Q. All right, we want to talk to you about a few
 22 things, okay? First of all, we're looking for jurors,
 23 obviously, but we're looking for jurors that can keep
 24 an open mind and follow the law, all right? And let's
 25 begin with "keep an open mind." Are you somebody that

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1 you think you can keep an open mind in this case?
 2 A. I think so.
 3 Q. Okay. All right, then let's talk a little
 4 bit about the law. First of all, this is a criminal
 5 case. Have you ever been on a criminal jury before?
 6 A. No.
 7 Q. No?
 8 A. I'm sorry, I have. It was a federal court.
 9 Q. Okay.
 10 A. Sorry.
 11 Q. So you have been on a criminal case before?
 12 A. Yes.
 13 Q. All right.
 14 A. It was a drug case.
 15 Q. It was a drug case, all right. Probably a
 16 checkpoint case, wasn't it?
 17 A. No. It was a -- he was buying drugs in
 18 Memphis, but the drugs were coming from the Valley.
 19 Q. Okay, all right. In that case, as in any
 20 criminal case, the State, or over there they call it
 21 "The Government," but the same -- same deal, --
 22 A. Okay.
 23 Q. -- State's got the burden of proof. They
 24 brought the charges, they got to prove them, okay?
 25 That's what the law says. State just doesn't get to

1 accuse us and then it's true. They have to prove
 2 that, in fact, if we are charged we did the crime.
 3 You -- you agree with that?
 4 A. Yes.
 5 Q. All right. And -- and their burden of proof
 6 is beyond a reasonable doubt, and -- and I know, for a
 7 fact, that's the burden that was used over in federal
 8 court --
 9 A. Yes.
 10 Q. -- when you did that case. And that's the
 11 burden that we have here, and that's in every criminal
 12 case, okay, beyond a reasonable doubt. And we don't
 13 have a definition, but it is the highest burden of
 14 proof in the law, okay? Law says that that's the
 15 burden of proof. Now, it does not mean beyond all
 16 doubt or beyond a shadow of a doubt, but it does mean,
 17 you know, beyond a reasonable doubt, and that's --
 18 that's a high burden.
 19 Could you hold the State to that burden,
 20 no more, no less?
 21 A. I think so.
 22 Q. Okay. You say you think so. What makes you
 23 think maybe not?
 24 A. It's a tough thing to prove.
 25 Q. Well, I mean --

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1 A. If they have all their evidence in place and
 2 they provide all their evidence saying that yes, this
 3 is what happened, then, yes.
 4 Q. Okay. I mean, you know, and the standard is
 5 high for a reason, that is, because we don't want to
 6 just take someone's liberty --
 7 A. Correct.
 8 Q. -- willy-nilly. I mean, they got to have
 9 their ducks in a row, okay? Now, as part of that, our
 10 law says a person is presumed to be innocent until the
 11 State can prove otherwise, if they can prove
 12 otherwise, okay? That is, you know, until they prove
 13 it, a person's presumed to be innocent. That's what
 14 the law says, and that's not anything new. That's
 15 ancient stuff that's been handed down to us from the
 16 English and the Greeks and the Romans, and all the way
 17 through Western Society, that -- do you -- can you
 18 follow that instruction?
 19 A. I believe so.
 20 Q. Okay. And sometimes lawyers will ask jurors,
 21 "Well, if you had to vote right now, how would you
 22 vote," and, of course, the answer is not guilty,
 23 because State hasn't proven this case. You haven't
 24 heard anything yet.
 25 A. Correct.

1 Q. You agree with that?

2 A. That is correct.

3 Q. And maybe they can and maybe they can't.
4 But, in any event, they certainly haven't done it at
5 this point.

6 All right, now, you know, all of these --
7 all of these concepts I'm talking to you about
8 intertwine, and the next one is the burden never
9 shifts over here to the Defense table. They don't
10 have to do anything. They don't have to present a
11 case. They have to present a case, that is, the
12 State, but the Defense doesn't have to present a case,
13 and as part of not having to present a case, Defendant
14 doesn't have to testify. That's a -- it's our Fifth
15 Amendment right. It's part of the Bill of Rights.
16 It's, you know, it's all -- goes all the way back to
17 day one of our Constitution.

18 And the idea makes sense, really, because
19 if the Defense doesn't have any burden, then they
20 don't have to put on any evidence, including their own
21 client. And I submit there's a lot of reasons why a
22 defendant wouldn't want to testify. Maybe his
23 lawyer told him not to, maybe he said, "You know what,
24 they can't -- they haven't proven their case, you
25 don't have to testify." Maybe -- maybe he's

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1 uneducated, maybe -- maybe he gets nervous in
2 situations such as this and starts stuttering, maybe
3 -- there's -- there's different reasons, right?

4 What I need to know from you is whether
5 you hold it against somebody, that is the Defendant in
6 this case, if he didn't take the stand? We don't know
7 at this point, he may or may not, but if he doesn't,
8 would you hold it against him?

9 A. I don't think so.

10 Q. Well, because sometimes we have people say,
11 "Well, you know, if the case is close, I would hold it
12 against him," or, "You know, when I go back there, I
13 like to hear two sides of the story, and if I don't
14 hear his side, I'm just going to -- I'm going to hold
15 it against him. I don't care what the law says." I
16 mean, if that's you, that's okay, but we do need to
17 know.

18 A. I think I can be open-minded.

19 Q. Okay. And you wouldn't hold it against him,
20 then, if he chose not to testify?

21 A. I don't think so, no.

22 Q. Okay. All right. Let's talk a little bit
23 about the charge itself. It's capital murder, okay?

24 A. Uh-huh.

25 Q. And what is capital murder? Well, it

1 certainly is murder, okay, which is the intentional
2 taking of the life of another, but it's murder plus,
3 murder plus something else. And the legislature has a
4 laundry list of things that can be capital murder.
5 But, in this case, the State is alleging that the
6 Defendant committed the murder on a given date in
7 Nueces County, Texas, while in the course of
8 attempting to or committing a robbery, okay? You
9 follow me?

10 A. Yes.

11 Q. And that to prevail on -- on this case, the
12 State needs to prove all of the elements of capital
13 murder, as alleged in the indictment, that is, they
14 have to prove the murder and they have to prove the
15 robbery or attempted robbery. You follow me?

16 A. Yes, I do.

17 Q. Okay. And they don't get to just -- they
18 don't get to just prove half of it and win, all right?
19 Not to say that there may -- he may be guilty of
20 something else or maybe nothing at all, but my point
21 is they have to prove all of the elements, okay?

22 A. All or nothing.

23 Q. All -- it's all or nothing. They got to run
24 the table. They don't get to -- they don't get best
25 of seven. They have to prove them all. Could you

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1 hold the State to that burden?

2 A. Yes.

3 Q. All right. Now, we have a bifurcated trial
4 system in Texas, which means that the first part of
5 the trial we do guilt or innocence. State presents
6 their side. Defense, if they want to they present
7 evidence, if they don't want to, they don't have to.
8 Do closing arguments. I read to you the Charge. Take
9 back the Charge. That's kind of -- I call it the
10 juror's instruction manual, but it's a packet of law
11 that you take back there, and you deliberate as to
12 whether the State has proven their case beyond a
13 reasonable doubt. And if the Defendant is acquitted,
14 that's the end of the case. If the Defendant is
15 convicted, then we go to part two, which is the second
16 phase of the trial.

17 Second phase of the trial is the
18 punishment phase. And if the Defendant is found
19 guilty of capital murder, there's two things that can
20 happen, life in prison or death, death sentence.
21 Well, you don't say that. The jurors don't go back
22 and say, "You know, let's take a vote," and they come
23 to an agreement on life or death. We don't do that.
24 We answer questions, okay?

25 And this is Question No. 1 over here, and

1 that is, "Is there a probability that the Defendant
2 would commit criminal acts of violence that would
3 constitute a continuing threat to society," and the
4 jurors would answer yes or no. Then they would go to
5 the second special issue, which is right over your
6 right shoulder, and, "After taking into consideration
7 all the evidence, including the circumstances of the
8 offense," that is, what you hear at the first part of
9 the trial "and the Defendant's character and
10 background and the person moral culpability of the
11 Defendant, is there a sufficient mitigating
12 circumstance or circumstances to warrant a sentence of
13 life imprisonment, rather than death sentence be
14 imposed?" Okay.

15 That is, you may hear on the second part
16 of the trial, if we get that far, other stuff, maybe
17 the Defendant's background. Maybe he was a good kid,
18 maybe he was a bad kid. Maybe he had a lot of
19 criminal history, maybe he didn't have any at all.
20 Maybe he did a lot for the community, maybe not, you
21 know? And those are the kind of things that could be
22 mitigating circumstances.

23 But what's a mitigating circumstance is
24 really up to the jury. Some people may think that a
25 particular thing is a -- is a mitigating circumstance

1 capital murder, I don't care about any of this in
2 Special Issue No. 2, it's always going to be death,
3 okay, no matter what."

4 And I need to know from you if you can
5 keep an open mind and answer these questions
6 truthfully.

7 A. I believe so, yes.

8 THE COURT: All right. Well, I'm going
9 to turn you, then, over to Mr. Skurka at this time.

10 MR. SKURKA: Thank you, Judge.

11 VOIR DIRE EXAMINATION

12 BY MR. SKURKA:

13 Q. Hello, Ms. O'Brien, how are you today?

14 A. Just fine, thank you.

15 Q. As the Judge introduced me, my name is Mark
16 Skurka. I'm an assistant district attorney, and along
17 with Geordie Schimmel here, we'll be privileged to
18 present this case to you if you're selected on this
19 jury.

20 I want to tell you right off the bat,
21 there's no right or wrong answers to anything you say.
22 I don't want you to answer in such a way you think I
23 want to hear or the Judge wants to hear or the Defense
24 wants to hear, just tell us your true feelings about
25 some of the issues we talk about in this case and

1 and other people may think, no, it doesn't mean
2 anything to me. I mean, that's where the jury comes
3 in and that's their decision.

4 Beginning of the trial I'm going to give
5 an oath to the jury, and that is, it's going to go
6 something like this, "Do you solemnly swear that you
7 will render a true verdict based upon the evidence and
8 the law presented to you?" And then the jurors, I
9 suspect, will say yes, I can. So what I need to know
10 from you is, first of all, could you take that oath to
11 render a true verdict on the guilt or innocence phase
12 of this trial?

13 A. Yes.

14 Q. All right. And secondly, if we get to the --
15 if he is convicted, the Defendant, that is, of capital
16 murder and we get to the special issues, could you --
17 could you answer those questions truthfully?

18 A. I believe so, yes.

19 Q. Okay. Because some people, they say, "Well,
20 you know what, I -- I realize that this is the law,
21 and maybe it -- it's our civic duty, but I just can't
22 answer these questions truthfully because I can't
23 participate in the process that may lead to the death
24 penalty." Or the flip side of that is, some people
25 say, "You know what, if he gets found guilty of

1 we'll get through this, okay?

2 A. Okay.

3 Q. The first question I have is -- is how you
4 feel about the death penalty in general.

5 A. I support the death penalty.

6 Q. Why?

7 A. I think there's -- it's some way of helping
8 prevent crime. Some people think twice about
9 committing a crime if they know that they are facing
10 the death penalty.

11 Q. So your biggest reason for supporting the
12 death penalty is because you think it deters other
13 people from doing the thing.

14 A. I think we need to hold people accountable
15 for their actions.

16 Q. Okay. And so, it's -- in addition, it's
17 holding --

18 A. Yes.

19 Q. -- in addition to deterring others, that
20 person has to be held accountable for the crime.

21 A. Correct.

22 Q. So it's kind of several reasons.

23 A. Yes. I can't say it's just one specifically,
24 no.

25 Q. Because some people say, "Well, gosh, you

1 know, we still have people doing these horrible
 2 crimes, even though we have the death penalty, --
 3 A. That is true.
 4 Q. -- you know? It's not really working," but
 5 then some people say, "Yeah, but at least it deters
 6 that person. We know that person won't hurt anybody
 7 ever again." Does that make sense?
 8 A. Yes, it does.
 9 Q. But as the Judge has already pointed out some
 10 things, and we pointed out the first day, certainly
 11 things don't happen automatically. And a lot of times
 12 lay people get up here and say, "Well, it's a capital
 13 murder, he must be guilty and he must get the death
 14 penalty automatically." And we always have to tell
 15 them, "No, there's a process we have to go through and
 16 you have to make sure he qualifies for the death
 17 penalty." Because, like I tell people, nothing's
 18 automatic in this world. You have to be able to be --
 19 you must have heard the Judge say it a dozen times,
 20 open-minded; wait till you hear all the evidence. And
 21 I'm assuming that probably as a teacher, you've been a
 22 teacher for a long time, you have to do the same
 23 thing, you make decisions and you want to have all the
 24 evidence before you make a decision, right?
 25 A. I try to, yes.

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1 Q. Well, you don't -- I mean, your first day of
 2 school when a kid walks in the door, do you look at
 3 him and say, "He's going to be a C student. This
 4 one's going to be an A student. This one's going to
 5 be --"
 6 A. I try to be open-minded.
 7 Q. Right. And -- and that's kind of what you're
 8 supposed to do in this case. Tell me about when you
 9 first heard it was this kind of case, a capital murder
 10 case, when the Judge came down, remember that big room
 11 with, you know, --
 12 A. Yes.
 13 Q. -- 2- or 300 people in there, and nobody knew
 14 exactly what they were called for till the Judge came
 15 out and said, "Folks, this is a criminal case and this
 16 is a capital murder case. John Henry Ramirez, sitting
 17 over there, could be facing the death penalty," what
 18 was your first reaction when you heard it was that
 19 kind of case?
 20 A. That it would be a tough case.
 21 Q. Why?
 22 A. It's a tough decision. You have to listen to
 23 a lot of evidence and then make your decision based
 24 upon that evidence.
 25 Q. Tough decisions are probably confronted by

1 all of us in our daily lives.
 2 A. Yes.
 3 Q. Right?
 4 A. I agree.
 5 Q. Are those decisions that you're incapable of
 6 making?
 7 A. No.
 8 Q. No. And when you -- when we put you on a
 9 jury, if you get selected on a jury, do you agree with
 10 me that the law should be that 12 people make that
 11 decision, not just one person like a judge having all
 12 that power or the District Attorney's Office, would
 13 you agree with me that's a pretty good system to have
 14 the people decide whether they get the death penalty
 15 or not?
 16 A. Yes.
 17 Q. What -- what you're -- what you're saying to
 18 me is what I hear a lot of people say is, "My gosh,
 19 this is an awesome responsibility. It's -- it's
 20 really the pinnacle decision I have to make."
 21 A. Well, it's easy to sit here and say, "I
 22 believe in the death penalty," but it's something else
 23 to sit here and say, "I believe and am I willing to
 24 carry out that belief."
 25 Q. That's my question to you. Can you, Diana

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1 O'Brien, carry that out if you think the evidence
 2 warrants it?
 3 A. If you can prove beyond a reasonable doubt
 4 that he's committed the crimes he's been accused of, I
 5 believe I can.
 6 Q. Okay. And the secondary thing is, I can't
 7 just prove it to you that he committed the crime, I
 8 also have to show you or give you evidence to prove
 9 that he should get the sentence, instead of a life
 10 sentence. Remember, it's not --
 11 A. Correct.
 12 Q. -- automatically done.
 13 A. Correct, it's not automatic.
 14 Q. So you'd follow that, right?
 15 A. Yes.
 16 Q. And that was my question. Because I've had a
 17 lot of people go up there and they'll tell me, "Mark,
 18 you know, I'm glad we have the death penalty. It's a
 19 good law, I support it. We should do good," and I
 20 say, "Okay, I'll put you on a jury to make that
 21 decision," and then they back off and go, "Oh, wait a
 22 minute, not me. Get somebody else to do it." And,
 23 unfortunately, with the jury system the way it is, you
 24 don't necessarily have a chance to opt out and let
 25 somebody else carry the ball. You may have to carry

1 the ball.

2 And that's kind of my question to you.

3 How do you feel about doing that? I mean, can -- some

4 people can talk the talk and some people can't walk

5 the walk. I know that's kind of --

6 A. It --

7 Q. -- crude, right?

8 A. No, but it is a tough decision. I have

9 thought about it, and you're right, I've never been on

10 a jury where I've had to make that decision, but I do

11 believe in the death penalty and -- and if he can

12 prove his case, and, like I said, beyond a reasonable

13 doubt, and we can answer all these questions then yes,

14 I think I can.

15 Q. Okay. And -- and if you can't, that's fine,

16 too. I just -- we just need to know. Like I said,

17 some people, when they're faced with the decision,

18 they say, "Well, look, I -- I just can't do that."

19 A. Right.

20 Q. You know? And some people say -- and I'll

21 tell you, I don't think anybody wants to do it. We

22 had a juror a few minutes ago say, "Hey, I'm not going

23 to be racing to the head of the line to be in line to

24 do this, you know, but it's my civic duty, and if I

25 get the information and I make an intelligent decision

1 based on the evidence, I can follow through on that."

2 Is that kind of how you feel? Maybe -- I don't know

3 if it's reluctance or uneasiness because nobody should

4 want to do that.

5 A. Right. I don't -- you know, I don't know

6 anyone that wants to volunteer to be --

7 Q. Oh, no.

8 A. -- on this jury.

9 Q. You're right.

10 A. But this is what our system is based upon.

11 Q. Right. Actually, there probably are some

12 people who would volunteer. Those kind of people

13 worry me, too.

14 A. Yes, I think I've taught a few of those.

15 Q. Well, but you see what I'm saying.

16 A. Yes, I do.

17 Q. You look at my point of view. I want to know

18 if I prove it to you, you can look at him, because

19 that's him. Look at him.

20 A. That's correct.

21 Q. It's not somebody you just see on the news or

22 read about in the paper, that's him. Can you look at

23 him and tell me that you can vote for death if the

24 evidence warrants it?

25 A. If the evidence warrants it, then, yes, I

1 believe I can follow out those instructions.

2 Q. Okay. I'm going to turn that around on you,

3 now, because they're going to ask you the opposite.

4 A. Uh-huh.

5 Q. If you think that the evidence is there that

6 he's not guilty, can you vote not guilty?

7 A. If you don't prove your case.

8 Q. Right. Can you vote not guilty, then?

9 A. Sure, I can vote not guilty.

10 Q. And if the evidence is such a way and the

11 questions are answered in such a way that you think he

12 should get a life sentence instead of a death

13 sentence, can you vote that way?

14 A. I believe I can.

15 Q. Okay. So you're equal both ways. You're not

16 leaning toward the death sentence, you're not leaning

17 toward guilty at this point, right?

18 A. No.

19 Q. And that's where we want you to be. Some

20 jurors come in and they have preconceived notions, and

21 they'll think this and think that and just kind of got

22 to be an equal slate. And not only do they have to be

23 an equal slate, he's presumed innocent at this time.

24 A. Correct.

25 Q. Remember, the Judge said that?

1 A. Yes, I do.

2 Q. In our system the law, the State has to prove

3 the case beyond a reasonable doubt. As he sits there

4 he's presumed innocent. Does that mean he is

5 innocent? No, it just means at this point in time

6 he's presumed innocent. Because? You haven't heard

7 any evidence yet.

8 A. Correct.

9 Q. You understand that?

10 A. That's correct.

11 Q. It's a presumption that you give him. You

12 don't start him off guilty and then he has to prove

13 himself innocent. You start him off innocent, then

14 the State has to prove him guilty. And -- I mean,

15 that's what our Country is based on.

16 So looking back at this, how do you feel

17 about being -- if you got selected on this jury, how

18 would you feel about being on that and participating

19 in that decision?

20 A. Well, if I had to do it, I'd do it.

21 Q. Okay. Not be --

22 A. It's not --

23 Q. It's not a happy thing to do.

24 A. No, but it's part of our system.

25 Q. Uh-huh.

1 A. He's entitled to a fair jury. Like I said,
2 is it going to be an easy decision? Certainly not. I
3 don't think it would be easy for anyone to sit here
4 and say, you know, "I'm going to put you to death."

5 Q. Okay. And that's why we have a system set
6 up. He's got very capable attorneys representing him.
7 He's got a very capable Judge up there making the
8 calls on the legal decisions. You see the -- all the
9 safeguards we have in the system --

10 A. Yes.

11 Q. -- to make sure. And then it's a -- not a
12 joint decision, but it's a 12-person decision, not
13 one.

14 A. Right.

15 Q. So you think you can follow through with it
16 if you need to.

17 A. I think I can follow the law.

18 Q. All right. Do you think what a person looks
19 like or how old he is has anything to do with the
20 decision of whether he's guilty or not and what
21 punishment they should get?

22 A. Maybe if he was eight years old.

23 Q. Okay. You see where I'm going. Because
24 sometimes people say, "Well, gosh, you now --" I know
25 I've tried criminal cases for 22 years, and it seems

1 to me that jurors always think that it's going to be
2 Charles Manson sitting there, right? They have that
3 stereo-type image of Charles Manson or some
4 scary-looking biker guy, and sometimes they don't look
5 like that.

6 A. No, he doesn't look like that.

7 Q. He doesn't look like that.

8 A. No, he does not.

9 Q. But would you agree with me a jury should
10 make a decision on what he had did, instead of what he
11 looks like?

12 A. Yes.

13 Q. And talking about age, the laws in Texas says
14 you can't execute somebody who's under 18 years of
15 age. You're not -- we can't execute juveniles here in
16 Texas. And that's probably good law, but I think the
17 law also recognizes that once you're past 18, whether
18 you're 20, 30, 40, 50, you should be old enough to
19 recognize the consequences of your actions and obey
20 the law. Would you agree with that?

21 A. Yes.

22 Q. So just because he may look young or his
23 appearance is some way, you would make a decision on
24 the evidence, not the way he looks.

25 A. Correct.

1 Q. Okay. Do you understand that the reason this
2 capital murder, as the Judge said, it's murder plus
3 robbery.

4 A. Yes.

5 Q. And in this case, it says murder while in the
6 course of committing robbery or attempting to commit
7 robbery. In other words, they could have finished a
8 successful robbery or were trying to rob somebody when
9 the killing took place. Say, for example, you --

10 somebody robs a bank, and they're getting out the door
11 with a bag of money and they get caught by the cops.

12 Can he come to court and say, "Hey, I'm not guilty. I
13 never got away with it. I never got the money, so I'm
14 not guilty?" No. It says, "in the course of
15 committing robbery or attempting to commit robbery."

16 So it could be either way in that within the killing
17 takes place, and you have to have both of them
18 together. And the law says, not every case, you heard
19 that the other day, not every murder case can you be
20 even eligible for the death penalty. It's got to be
21 this special type of case.

22 A. Yes.

23 Q. Do you think that's a good scheme to have
24 where Texas only makes those really serious cases
25 death penalty cases?

1 A. Seems fair.

2 Q. All right. Now, there's two parts of the
3 trial. The first part is guilt or innocence, and the
4 second part is the punishment phase. Remember that
5 just if you find the person guilty on the first part
6 doesn't mean he automatically gets the death penalty,
7 it goes to the second part. And, of course, if he's
8 found not guilty, the trial ends there.

9 A. Correct.

10 Q. But let's just say, for purposes of this
11 demonstration, you found him guilty from the jury, now
12 you go to the second part of the trial. In the second
13 part of the trial, you may get to hear additional
14 evidence about his background, his character,
15 whatever. Generally speaking, in the first part of
16 the trial, you just hear about what happened, you
17 know, that day, about the crime --

18 A. Correct.

19 Q. -- itself and maybe the surrounding
20 circumstances of that crime. Well, then, you find him
21 guilty of that crime, but then you go to the second
22 part. Well, maybe you want to know what his
23 background is. I mean, was he an A student in school,
24 or made honor roll, or, you know, has he been to
25 prison five times before, you know, what kind of

1 background does the guy have? And you'd probably want
2 that to make a decision on what you're going to do
3 with this person, right?

4 In other words -- the law says this,
5 really: The law says you can make a decision on the
6 death penalty based on just that first part of the
7 trial. The law also says that you should consider
8 mitigating circumstances before you make the final
9 decision. So let's say that in our scenario the
10 jury's found him guilty of capital murder. You hear
11 -- heard additional evidence. Maybe he's a good guy,
12 maybe he's a bad guy. Maybe he's an Eagle Scout, you
13 know, maybe he's a roughneck in the neighborhood or
14 something, I don't know.

15 So you hear that evidence and then you
16 answer the special issues. And the first -- and you
17 don't just vote, "Hey, I check off death or I check off
18 life," you answer the two questions and depending on
19 how you answer the questions the death penalty or life
20 sentence gets imposed.

21 And the first question is right there on
22 the board in front of you. "Is there a probability
23 that the Defendant would commit criminal acts of
24 violence that would constitute a continuing threat to
25 society?" Do you have a crystal ball?

1 A. Other criminals.

2 Q. Right, other inmates that are in prison. Who
3 else?

4 A. Guards.

5 Q. Guards. Maybe people that work there, like
6 the warden and his staff, and maybe medical people or
7 maintenance people that work at the prison, right?

8 A. Correct.

9 Q. Okay. So does that mean he's actually taken
10 away from society? No, he's still interacts with
11 other human beings. Now, a much more limited way,
12 but, you know, we don't have like a desert island, we
13 put them on a desert island, they'll never have social
14 interaction again.

15 So would you agree with me that society,
16 even though -- I'm sorry, that prison, even though
17 it's a little bit more hampered, is still part of
18 society, correct?

19 A. Correct.

20 Q. Okay. And have you ever heard of that
21 happening, where people hurt guards or prisoners --

22 A. Certainly.

23 Q. Sure, that happens. So just because you put
24 them in prison doesn't guarantee that he's never going
25 to commit criminal acts of violence again, does it?

1 A. No.

2 Q. You can't predict what a person's going to be
3 like down the line, can you?

4 A. No.

5 Q. No one can. The law doesn't require me to
6 predict, for sure, what's going to happen. That's why
7 it says, "Is there a probability?" It doesn't say is
8 there a certainty that's going to happen. So the law
9 doesn't require me to prove to you a hundred percent
10 for sure what's going to happen, it just says, "Is
11 there a probability."

12 The second part of the sentence -- the
13 question says, "that the Defendant would commit
14 criminal acts of violence." It doesn't say he has to
15 necessarily murder somebody or commit capital murder
16 again. Do you think he's a danger in the future to
17 commit further acts of violence, whatever they may be,
18 but it doesn't necessarily have to be murder.

19 Then the last part of the question says,
20 "That will constitute a continuing threat to society."
21 Sometimes people come up to me and they say, "Well,
22 Mr. Skurka, well, why do you have to seek the death
23 penalty? You can just put him in prison. That takes
24 him away from society." And I always say, "Who is in
25 a prison?" Tell me who's in a prison.

1 A. No.

2 Q. Okay. So, that's what the question is.

3 Based on that, the evidence you hear, is there a
4 chance he's going to be a danger in the future? We
5 call that "the future dangerousness question." And
6 it's kind of something, do you think he's going to
7 hurt somebody in the future, you know, and be a threat
8 to society? And you answer that question yes or no.

9 Then we come to the second question, and
10 the second question is the mitigating circumstances
11 question. Mitigating circumstances -- the word
12 "Mitigating" means anything that would lessen or make
13 less severe the punishment, anything that would make
14 -- lessen or reduce the punishment. In other words,
15 he did the crime, but is there any facts or
16 circumstances that warrants that he get a lesser
17 sentence like life, instead of death?

18 Let me give you an example, and here's a
19 good one because you're a teacher, and I'm going to
20 take you back to my old days when I was in school. Me
21 and my friend were both in the 8th grade and I was
22 always getting in trouble. I was always called in the
23 principal's office, and I probably -- a lot of stuff
24 was for, you know, doing goofy things and stuff. But
25 let's say I had been suspended five times before

1 because of something else I did, and say my friend and
2 I both did something bad together. Let's say, a
3 violation of the school rules. Now, me I had been
4 suspended five times before for this, and when the
5 violation happened, I did it really bad. It was a
6 really bad violation of the -- of the school rules.

7 My friend, on the other hand, had never
8 been suspended before. It was his first time he had
9 violated a school order. And, actually, what happened
10 is, after he violated the school rule, he made up for
11 it somehow right away, and tried to fix what he had
12 done wrong, and admitted his guilt right away, or
13 something like that, and -- and tried to clean up what
14 he -- what mess he had made, or something like that,
15 okay? And the principal here, says, "How am I going
16 to treat these people? They both violated the school
17 rule." But is the principal going to treat them both
18 the same? Probably going to treat one person, me, the
19 bad one, worse, because I've had a background in doing
20 this, violating school rules. So maybe I get
21 suspended for two weeks.

22 And then the other guy, maybe he doesn't
23 get suspended. Maybe he only gets, you know, put on
24 probation for a week or maybe in-school suspension or
25 stay after school for a day or two. And why is that?

1 burglary. They both did something that I think is bad
2 and I'm going to give them the highest sentence I
3 can." Then you hear the first case. In the first
4 case what happened is, that burglar, what he did was
5 kicked in the kitchen door, broke the door, went into
6 the house, stole all the jewelry, stole all the money,
7 stole all the, what do you call, electronic equipment
8 and T.V.s and stereos and everything. And then you
9 find out on the jury that he's been to prison ten
10 times before for burglary.

11 Now, switch scenario. It's the second
12 burglar, completely different case. In that burglary,
13 you find out he didn't break in the door, he opened
14 the back door because it was unlocked, and he went
15 inside the house and he didn't even go ransack the
16 house. What he did was, he didn't take any money,
17 stereos, jewelry, anything like that, all he did was
18 go into the kitchen and steal a loaf of bread and some
19 food to go feed his family because he had lost his job
20 and he needed something to feed his family. Didn't
21 take anything else except food. And then you'll also
22 find out this guy hadn't been to prison ten times for
23 burglary. He's never even been arrested before in his
24 life.

25 So you're sitting on the jury. Would you

1 A. (No response.)
2 Q. Because they both have different backgrounds,
3 right? One person committed a lot of violations
4 before and he did really bad in this one, and the
5 second person had never committed a violation before.
6 And I know you're a teacher, not a principal, but
7 don't principals look at stuff like that when they
8 meet out punishment?

9 A. They try to be fair and be equal.

10 Q. Right. Well, equal because of the violation
11 or equal because of the person's past?

12 A. Equal because of the violation.

13 Q. Right. But would you agree that sometimes
14 the past has something to do with the thing, too?

15 A. Occasionally.

16 Q. Okay.

17 A. But maybe they just didn't get caught.

18 Q. Now, that's a good point. That's a good
19 point. Well, say you were on a jury, two different
20 juries and they were both burglary cases. And
21 burglary basically means you break into somebody's
22 house and steal something without permission.

23 A. Uh-huh.

24 Q. And you're sitting there on the two juries
25 and you're thinking, "Both these guys are guilty of

1 actually punish both of those guys equally? Probably
2 not.

3 A. Probably not.

4 Q. Probably the first guy, because of the
5 aggravating circumstances you would go higher on and
6 the second guy you would probably go lower on because
7 of the other circumstances, and that's what that
8 question is designed to show. "Is there a sufficient
9 mitigating circumstance to warrant that a sentence of
10 life, rather than death be imposed?"

11 Sometimes you hear people say, "Well,
12 there's extenuating circumstances," like in the second
13 guy thing, he could have stolen a bunch of stuff, he
14 didn't, he just took bread and food. Now, it's wrong
15 to break -- go into somebody's house and take
16 something, but that's a lot different from the first
17 guy, right?

18 A. Correct.

19 Q. You always see -- sometimes you'll see that
20 in the paper. You'll see one guy gets five years
21 probation and one guy gets fifty years in prison. You
22 think why is that? And I always tell people every set
23 of facts is different, every person's background is
24 different. Maybe a first-time offender, maybe a
25 five-time loser, you never know.

1 That's what the Judge is asking you to do
2 in this case. You found him guilty of capital murder.
3 You think he's a continuing threat to society, but
4 wait, jury, before you decide that, he says, "Take
5 into consideration all of the evidence, including the
6 circumstances of the offense," what happened that day,
7 "The Defendant's character and his background," you
8 know, what's his past like, "his personal moral
9 culpability, is there a sufficient mitigating
10 circumstance or circumstances to warrant that a
11 sentence of life, rather than death sentence be
12 imposed?" In other words, he did the crime, but is
13 there a reason we should reduce that sentence? That
14 would be the mitigating circumstance.

15 Now, what is a mitigating circumstance I
16 couldn't tell you. That's up to the jury to decide.
17 Some people may say, "Well, you know, he's very young
18 and, or, you know, he was a war hero, he's a decorated
19 war hero, so we should give him a break, or, you know,
20 he made good grades in school years ago." And other
21 people may say, "Look, I don't care about all those
22 things. He still did the crime. He's got to answer
23 for the consequences of that crime."

24 You see what I'm saying?

25 A. Yes.

1 death penalty, is any reason not to give the death
2 penalty? There may be and there may not be, but the
3 law says you have to consider everything, listen to
4 everything before you make that decision because if
5 you do anything automatically, like, you answer that
6 first question, "Well, I think he's a continuing
7 threat to society, so I'm always going to say he gets
8 the death penalty," Judge says, "No, you've got to
9 answer the second question, too."

10 Wouldn't that do -- is that kind of fair
11 to you, too, to look at all that other stuff, too, and
12 decide?

13 A. Certainly.

14 Q. Sure. And that's what it should be. One of
15 the other laws the Judge may give you is this,
16 "Voluntary intoxication is not a defense to crime."
17 If you go get yourself drunk or high on drugs
18 voluntarily and you commit a crime, that's not an
19 excuse to the crime. You can't say, "Well, I robbed
20 that bank, but I was drunk, so I'm not guilty." No
21 way. You can't do that. What you can say, though,
22 the Judge may tell you, is that voluntary intoxication
23 is a possible mitigating circumstance. Some people
24 may say, "Oh, well, he did that crime, but he was
25 drunk at the time, so we'll give him a break." Other

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1 Q. It's kind of a catchall on the jury,
2 catchphrase that says before you give him the death
3 penalty look over everything, look at the big picture
4 that day, whatever -- what else he did that day and
5 what else he's done in the past, or is he a good guy,
6 is he a good guy, is there any reason to lower it? If
7 there's no reason to lower it, you vote no, and he
8 gets a death sentence. If you -- if you do find
9 sufficient mitigating circumstances, then he might get
10 a -- he would probably get a life sentence.

11 And that's the other part. It says it's
12 got to be sufficient. Just because you find a
13 mitigating circumstance, do you mean -- does that mean
14 you'll automatically lower the sentence to life? No.
15 The Defense may bring up something like that. They
16 may bring up, you know, he was a good student in
17 school or he helped his mom, you know, with the --
18 bring home the groceries or something like that. Does
19 that mean it necessarily outweighs the other stuff?
20 That's up to the jury to decide. That's why it says,
21 "Is there sufficient," is it enough to make it less --
22 lower the sentence? If it is, it is. If it isn't, it
23 isn't.

24 But it's kind of a -- I like to call --
25 it was your last catchall question before you give the

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1 people may say, "Look, I don't care if he was drunk or
2 not. He knew what he was doing. He got -- he gave --
3 he got himself drunk, so he has to pay the price."

4 You see what I'm saying?

5 A. Yeah.

6 Q. That's kind of an example of it. Do you have
7 any questions about the scheme or -- of the procedure
8 or the special issues that we have?

9 A. No, not at this time.

10 Q. Okay. Now, you teach business over at the
11 school?

12 A. I teach introduction to business, web
13 mastering and multimedia.

14 Q. I'm sorry, I didn't hear that last part.

15 A. Multimedia.

16 Q. What's that?

17 A. We do a little bit of everything in that
18 class. We do some desktop publishing, we do some
19 creating graphics, we do animation --

20 Q. Boy, --

21 A. -- presentations.

22 Q. -- things sure changed since I was in high
23 school. We didn't have that stuff. When Mr. Jones
24 and Mr. Garza were in high school, I think they taught
25 them hieroglyphics on the wall, you know, as a

1 caveman. Oh, I'm sorry. I couldn't resist that. No,
2 they're good guys, I was just teasing them, but -- but
3 so it's -- it's really changed a lot. It's not just
4 business administration, it's other things, too.

5 A. No, it's definitely changed quite a bit.

6 Q. Good. You like doing that kind of work?

7 A. Yes, I do.

8 Q. Tell me about your -- you're a Catholic, but
9 you disagree with the Church's position on that. Can
10 you expound on that a little bit?

11 A. It's just... I really can't. I don't know
12 how I -- I just do.

13 Q. Okay. Well, and that's fine, I mean, I
14 understand --

15 A. I know, it doesn't make a lot of sense,
16 because I'm not in favor of abortion, but yet, I
17 support the death penalty.

18 Q. Well, you're not the only Catholic that's
19 told us that. Sometimes Catholics will come in and
20 say, "Look, I believe in the Church teachings and I
21 try to follow them. In this area, we disagree. We
22 agree to disagree."

23 A. That's -- that's pretty much it.

24 Q. That's pretty much it. And you feel that
25 way. Okay. And, again, there's no right or wrong

1 answer.

2 A. Yes.

3 Q. I'm not saying one way or the other. I'm
4 just...

5 A. Just what I believe.

6 Q. Sure. Now, a couple of legal questions I
7 want to go over with you is, first of all, the
8 indictment. The fact that the person has been charged
9 with a crime doesn't mean he's guilty of the crime.

10 A. Correct.

11 Q. Do you believe that?

12 A. Yes.

13 Q. And you won't hold that against him that he's
14 been indicted, that doesn't mean he's guilty, right?

15 A. Correct.

16 Q. Sometimes people say, "Well, he's there, he
17 must be guilty." Well, you know, until you hear all
18 the evidence, you can't make that decision.

19 A. Correct.

20 Q. So do you agree with me, as he sits there
21 right now he's presumed innocent?

22 A. That's correct.

23 Q. And we have to prove he's guilty. And the
24 same thing is some people say, "Well, I want to hear
25 his side of the story. I want to hear him testify.

1 What's he going to say," and we have to tell them,
2 "The Judge will give you an instruction that says the
3 Fifth Amendment says you can testify if you want to,
4 but you don't have to testify, and you can't hold that
5 against the person."

6 You understand the Fifth Amendment?

7 A. Yes.

8 Q. And you won't hold it against him if he
9 doesn't testify, correct, if that's what the Judge
10 tells you?

11 A. If that's what the Judge tells us to do.

12 Q. And "beyond a reasonable doubt" is the
13 standard in this case. And that's the standard in
14 every case, whether it's a D.W.I. or capital murder,
15 the State always has that standard. And it's not
16 necessary -- I guess, the main thing I need to tell
17 you is it doesn't mean beyond all doubt, beyond a
18 shadow of a doubt, beyond any doubt. I mean, there's
19 no way I could prove this case to you a hundred
20 percent --

21 A. Correct.

22 Q. -- unless you were, like, a witness and saw
23 the whole thing, then you couldn't be on the jury.
24 So, you only hold me to beyond a reasonable doubt,
25 correct?

1 A. Correct.

2 Q. I like to tell people it's kind of a two-step
3 process. First of all it asks do I have a doubt, and
4 then if you have a doubt, ask yourself is it a
5 reasonable doubt? In other words, there may be an
6 inconsistency here or there. You know, somebody says,
7 "Well, it happened at 7:00," and somebody says, "It
8 happened at 7:15," and somebody else says, "It
9 happened at 7:10." Well, there may be an consistency
10 about what exact time it happened, but did it happen?
11 You see what I'm saying?

12 A. Yes.

13 Q. Do you have any questions about anything?

14 A. You-all said this was going to take
15 approximately two weeks?

16 Q. Yes.

17 A. Is that from opening arguments to closing
18 arguments, or is that also you're guessing on how long
19 deliberations would be?

20 Q. We are guessing that's how much the -- long
21 the evidence will take. It may only take a week. We
22 built in some extra time. We don't think it's going
23 to take necessarily two weeks, but I will tell you,
24 deliberations you can never tell.

25 A. Correct.

1 Q. Some juries take an hour to make a decision,
2 sometimes jurors take three days to make a decision.
3 But I think we're all agreed that the evidence is such
4 that it's -- you're not going to be tied up here for
5 weeks and weeks. We think it will be through in two
6 weeks.

7 A. Okay.

8 Q. Any other questions?

9 A. Not at this time.

10 Q. Okay. The bottom line is you think you can
11 be fair and impartial?

12 A. I think so.

13 Q. Listen to everything and make a decision
14 based only on the evidence?

15 A. Yes.

16 Q. And once you make a decision, can you follow
17 through with it?

18 A. I believe so.

19 Q. Thank you for your time, Ms. O'Brien. I'll
20 let the Defense attorneys talk to you now.

21 VOIR DIRE EXAMINATION

22 BY MR. JONES:

23 Q. Where do you teach?

24 A. Calallen High School.

25 Q. In my years as a -- as a trial lawyer, there

1 are two times of the year where there are two classes
2 of people who do not want to be called for jury
3 service. One, there are farmers in the springtime or
4 in harvest time. And the other are teachers at the
5 first day of school or for final exams.

6 A. That's correct. This trial is taking part
7 right before my semester exams. It would be much
8 easier for me to serve in the summer.

9 Q. What -- tell -- this case is -- this case has
10 started.

11 A. Correct.

12 Q. Jury selection. And we never know how long
13 this will take, but just from past experience in this
14 county, the trial, including the verdict, you know,
15 the decision-making process, probably would end the
16 first week of December, very longest the second week
17 of December. Assume the worst, okay? When is your
18 finals?

19 A. That third week of December.

20 Q. Third week in December. Okay.

21 A. I have no idea what I'd do with my classes if
22 I was out for two weeks.

23 Q. Two weeks before the final exam?

24 A. Two weeks before semester exams.

25 Q. Okay. Now, all right, here -- I'm going to

1 ask the big question.

2 A. Uh-huh.

3 Q. See, the Judge just stood up.

4 THE COURT: I'm just stretching. I'm
5 just stretching.

6 MR. GARZA: It's fixing to get deep in
7 here.

8 Q. (BY MR. JONES) Well, it -- it's very
9 interesting in -- the difference between in -- Judge
10 Galvan was a United States -- Assistant U.S. Attorney
11 at one time. In federal court, if during jury
12 selection, I know in Judge Head's Court, if one of the
13 jurors says, "I'm a farmer," or, "teacher," he says,
14 "You're excused." He just lets you go, you know? In
15 state law it's not so easy.

16 But, in order for a juror to be -- to
17 fully perform her duties, okay, especially in a case
18 like this, you have to be able to give it your
19 undivided, full attention.

20 A. Correct.

21 Q. Sometimes the jury summons comes at the wrong
22 time. You can imagine all the different situations.
23 Somebody's about to have a baby or they started a new
24 job, crops need planting, crops need, you know,
25 harvesting, first day, and so forth, okay? Now, what

1 I would -- the only thing -- and you've got to be
2 honest with us, here.

3 A. Uh-huh.

4 Q. If this case should drag on until, you know,
5 the second week of December, that's going to be the
6 most important part of the case. You may be hearing
7 -- you may be at the punishment stage of this case.
8 You're going to be hearing evidence and you're going
9 to have to be deliberating with 11 other people about
10 whether you give a life sentence or a death sentence.

11 A. Yes.

12 Q. And I can tell you from trying cases of this
13 kind in the past, that sometimes these jurors, when
14 they finish with one of these verdicts, they're --
15 they're worn out, you know, mentally worn out.

16 A. Yes.

17 Q. Sometimes they come out crying, or, you know,
18 they're just -- they put so much into it to try to
19 reach -- try to make the right decision. So, how long
20 have you been teaching?

21 A. 20 years.

22 Q. Okay. Well, you're a veteran, and so you
23 know -- you know what's required of yourself.

24 A. Yes.

25 Q. If -- in the worst possible scenario, if we

1 get into that second week in December, are you going
 2 to be distracted?
 3 A. It will be tough.
 4 Q. Okay. You didn't give me a straight answer.
 5 A. Part of it will be -- depend upon the
 6 behavior of my students while I'm gone because I've
 7 never been out for two weeks, and, normally, when I am
 8 out, I do not allow my students on the computers. And
 9 I really don't know what I'm going to do with them if
 10 I am out for two weeks.
 11 Q. Okay.
 12 A. You know, --
 13 Q. Can you tell me --
 14 A. -- especially right before semester exams.
 15 Q. Can you tell me, beyond a reasonable doubt,
 16 that you would not be distracted?
 17 A. That I would not be distracted? No.
 18 Q. Okay. And it's not your fault, you know,
 19 like you say, that you say the jury summons comes in
 20 January, no problem, you know, you can do it?
 21 A. Yeah, in the summer, no problem.
 22 Q. In the summer, no problem.
 23 A. But I -- I -- you know, I'll be honest with
 24 you, no, I cannot guarantee that I would not be
 25 distracted. If I am selected, most likely I will be

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1 on campus either before jury or after court, one of
 2 the two, --
 3 Q. Okay.
 4 A. -- probably every day.
 5 Q. All right. So you'd be keeping long hours.
 6 A. Certainly.
 7 Q. Sometimes we have jurors that work -- have
 8 real important jobs. They work at night, for example,
 9 and they -- they come to court, they're so tired they
 10 can hardly, you know, sit up in their chair.
 11 A. The educational process is not going to stop
 12 just because --
 13 Q. Oh, I know it's not.
 14 A. -- I'm not in the classroom. I mean, --
 15 Q. No, but see --
 16 A. -- I can't let it happen.
 17 Q. No, but just -- the students that you have,
 18 they only come your way one time. That's your class
 19 --
 20 A. That's correct.
 21 Q. -- and you want them to come and go --
 22 A. I don't want to see them, again.
 23 Q. -- with the best possible result. That's
 24 right. You agree with that.
 25 A. Yes.

1 Q. In other words, if -- if it would make you
 2 feel bad if they got shortchanged because of --
 3 because of this.
 4 A. Yes.
 5 Q. I mean, it's not like you're intentionally
 6 shortchanging them, it's just that --
 7 A. Correct.
 8 Q. -- the fact --
 9 A. Correct. I want to be fair to them, just
 10 like I'd want to be fair, you know, on a jury.
 11 MR. JONES: Okay. Can we have a
 12 preliminary hearing?
 13 THE COURT: Uh-huh.
 14 MR. SKURKA: Judge, I'd like to follow-up
 15 before we do that.
 16 THE COURT: Okay. Go ahead.
 17 VOIR DIRE EXAMINATION
 18 BY MR. SKURKA:
 19 Q. Ms. O'Brien, --
 20 A. Yes.
 21 Q. -- I understand when you say, "distracted,"
 22 because I get that a lot from teachers, too, when I'm
 23 picking juries. And generally speaking, it's -- I
 24 will admit to you, you're usually -- you're one of the
 25 exceptions. Usually the kids -- the teachers for the

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1 first graders, they don't want to be away from the
 2 kids, but if they're a middle school teacher, they
 3 want to be away from their kids. And if they're high
 4 school teachers, they figure they can take care of
 5 themselves. That's just what I've seen.
 6 A. Part of the problem is I teach specialized
 7 classes. No one else knows my software. So even if I
 8 let my kids on the computer, no one else can answer
 9 their questions for them.
 10 Q. Well, that was what I was going to follow-up
 11 in because when I was in high school, we had
 12 substitute teachers. There was others people that
 13 could come in and --
 14 A. Correct.
 15 Q. -- and carry the ball while you're gone for a
 16 short time. And Mr. Jones is right, we've had people
 17 that have jobs and they -- basically, we say, "How is
 18 this going --"
 19 A. Yes.
 20 Q. "-- to effect your job," and they say, "Well,
 21 it's going to be tough. I'm just going to have to go
 22 in a couple of hours at night, you know, put in my
 23 orders or do my -- my supervising job, or do some kind
 24 of work at home," and -- and, you know, I'll tell you
 25 lawyers do that, too.

1 A. Right.

2 Q. We come -- I was here at work yesterday for a
3 couple of hours, even though the office was closed.
4 So we all know about working outside. My question is
5 this, and I understand it's a distraction, because you
6 probably saw that very first day, people were coming
7 up to the Judge and say, "Look, Judge, I run my own
8 business --"

9 A. Yes.

10 Q. "-- and, you know, we'll have to shut down if
11 I'm not there." And then other people will come up
12 and say, "Well, Judge, you know, it's real important
13 to my company that I'm there," and the Judge says,
14 "How many people are in your company," and they'll
15 say, you know, "Ten," and he'll say, "Well, they can
16 get along without you for a little while."

17 So I guess what I'm trying to figure out
18 is because you seem to be a qualified juror, I mean,
19 is it -- is it going to be such a distraction that
20 it's really going to substantially interfere with you
21 being on this jury?

22 A. It -- it would be tough.

23 Q. Well, does that mean --

24 A. Because I --

25 Q. -- that you would not listen to the evidence

1 and you would just be thinking about, you know, "Well,
2 how am I going to teach Homer in seventh period if I'm
3 not there," or is it going to be that, you know, it's
4 a nagging thing, because we all have other --

5 A. Correct. It is --

6 Q. -- you know, all the jurors have other jobs,
7 and things --

8 A. Right. It's -- I'm not saying --

9 Q. -- that they need to --

10 A. -- it's not inconveniencing anybody that's
11 picked on a jury, unless maybe they don't have a job.
12 It's going to be an inconvenience. It's a disruption
13 in their lives.

14 Q. Sure.

15 A. Like I said, I have not idea what I'm going
16 to have my kids do if I'm gone for a week or two.
17 I'm --

18 Q. What have you done since -- remember, the
19 first day, a couple of weeks ago --

20 A. Yes.

21 Q. -- when we first met and the Judge told us
22 kind of what the --

23 A. Correct.

24 Q. -- schedule would be, did you go --

25 A. I've been --

1 Q. -- to your principal and say, "Look, you
2 know, there's a chance I may get called on this. What
3 are we going to do"?

4 A. Yes. And she said, "Don't get picked."

5 Q. She said that? Well, it must be nice to be
6 so valuable.

7 A. I'm not saying I'm an excellent teacher. I
8 feel that I'm a good teacher, but I teach specialized
9 courses and, I can tell you, we don't have a sub that
10 knows my subject area. No one else in my department
11 knows my subject area. And -- so I can tell you, I
12 honestly don't know what I'm going to do with my
13 classes for two weeks that I'm -- I have been trying
14 to think of it, you know, coming up with ideas in case
15 I was picked, I decide, you know, here's going to be
16 my lesson plans for two weeks and what they can do
17 when I'm not there, or -- I even thought about, you
18 know, they can leave me notes every day on the board
19 and I go in and answer them every evening.

20 But, yeah, I'm just being honest, it's
21 going to be tough if I am out for two weeks.

22 Q. So the bottom line is you think it will
23 substantially interfere with you?

24 A. I think it would interfere with my...

25 MR. SKURKA: Okay, thank you.

1 THE COURT: All right. Why don't you
2 wait in the jury room for just -- just a minute.

3 VENIREPERSON NO. 33: Sure.

4 THE COURT: I'm going to talk to these
5 lawyers.

6 (Venireperson exits courtroom.)

7 THE COURT: All right. Mr. Jones?

8 MR. JONES: We move to strike her for
9 cause, because of her -- her employment. And she's
10 said she couldn't give this task her full attention.
11 It's strictly the problem with teachers.

12 MR. SKURKA: Well, I -- I don't think
13 she's arisen to that, Judge, because, you know, being
14 a distraction is one thing. But I'm going to make it
15 easy --

16 THE COURT: All right.

17 MR. SKURKA: -- for the Court --

18 THE COURT: But you asked her.

19 MR. SKURKA: -- and I'm going to agree.

20 THE COURT: I mean, even on -- even on
21 your part of it, she said, "I think it would be a
22 problem."

23 MR. SKURKA: She kept saying said, "I
24 think it will be a problem. I don't know. It's a
25 distraction."

1 THE COURT: All right.
 2 MR. SKURKA: But I'll agree --
 3 THE COURT: All right.
 4 MR. SKURKA: -- just to be nice.
 5 I wish you would have brought that up a
 6 long time ago, so I wouldn't have spent so much time
 7 with her.
 8 THE COURT: All right, let's take a
 9 break.
 10 (Short recess.)
 11 (Venireperson enters courtroom.)
 12 THE COURT: Okay. All right.
 13 Ms. O'Brien.
 14 MR. SKURKA: You're not in trouble. She
 15 thought she was in trouble, Judge, being called to the
 16 principal's office.
 17 VENIREPERSON NO. 33: Right.
 18 THE COURT: Called to the principal's
 19 office. Well, actually, we've agree to let you go,
 20 all right?
 21 VENIREPERSON NO. 33: Thank you.
 22 THE COURT: And maybe you can give us
 23 some service over the summer one day or at a better
 24 time of the year, okay?
 25 VENIREPERSON NO. 33: Yes. Thank you

1 people that have already closed their minds or made up
 2 their minds before they've heard anything. You agree
 3 with that, right?
 4 A. Yes, I do.
 5 Q. That wouldn't be fair, right?
 6 A. Right.
 7 Q. So what I need to know from you is that you,
 8 are you somebody that can keep an open mind or have
 9 you seen something or heard something in the news
 10 about this case that, you know, you've already made up
 11 your mind one way or the other?
 12 A. Well, when you told me, in other words, not
 13 to pay any attention to the news or do anything, I
 14 didn't -- I stopped watching the news.
 15 Q. Okay.
 16 A. I just stuck to watching movies.
 17 Q. Okay. Well, that's fine, but -- but maybe
 18 you heard something beforehand.
 19 A. No.
 20 Q. Okay. So you can keep an open mind.
 21 A. Yes, sir.
 22 Q. All right. Next thing, let's talk about the
 23 law. The law is that in every criminal case in this
 24 country, it is the burden of the State, because they
 25 bring the charges, to prove the case.

1 very much.
 2 THE COURT: All right.
 3 MR. JONES: Get your legislators to
 4 change the law to give you an exemption.
 5 VENIREPERSON NO. 33: That would be nice.
 6 THE COURT: All right, let's take a
 7 little break.
 8 (Short recess.)
 9 (Venireperson enters courtroom.)
 10 THE COURT: All right. Come on in Mr.
 11 Starkey. You are Kenneth Starkey. Have a seat over
 12 here, please.
 13 VENIREPERSON NO. 31: Yes, sir.
 14
 15 VENIREPERSON NO. 31,
 16 KENNETH LEE STARKEY,
 17 VOIR DIRE EXAMINATION
 18 BY THE COURT:
 19 Q. All right, Mr. Starkey, we're here to talk to
 20 you about some stuff, okay? First of all, we're --
 21 obviously, you know, we're looking to pick a jury,
 22 okay?
 23 A. Yes, sir.
 24 Q. And what we're looking to do is pick a jury
 25 that can keep an open mind, all right? We don't want

1 A. Right.
 2 Q. All right? So -- and that's no different
 3 here, okay? It's the State's burden. You state --
 4 the law says, "State, you bring your charges. That's
 5 fine, but you got to prove them. You don't just get
 6 to say -- you know, you don't get to just accuse
 7 someone and then it's true, okay? You charge them,
 8 you prove it." And until that happens, the Defendant
 9 over here, really all of us, all of us as people here
 10 in this country, are innocent, until they prove it, if
 11 they can.
 12 Do you agree about with that?
 13 A. Yes, I do.
 14 Q. And would you presume that -- that the
 15 Defendant is innocent until they've proven, if they
 16 can, that he's guilty?
 17 A. That's what the -- what's what the country is
 18 based on. I'm innocent until proven guilty.
 19 Q. Absolutely. But, you know, there's some
 20 people that don't feel that way.
 21 A. Well, they are -- they're wrong.
 22 Q. They are wrong. And there are places in the
 23 world where the opposite is true. And I -- I submit
 24 that's not any place I'd want to live.
 25 A. No.

1 Q. Okay? So that's how we do it here, innocent
2 till proven guilty. And you have told me that you can
3 follow that law.

4 Now, let's see here, you have not been a
5 juror before.

6 A. No, sir.

7 Q. Which, that's okay. The burden of proof is
8 on the State, but the -- the burden is beyond a
9 reasonable doubt, okay? We don't have a definition of
10 what that is, but it is the highest burden that we
11 have in all of the law, criminal or otherwise, okay?
12 What it is not is beyond all doubt or beyond a shadow
13 of a doubt, but it is beyond a reasonable doubt, okay.

14 Would you hold the State to that burden,
15 no more, no less?

16 A. No more, no less. They got to prove it, they
17 got to prove it.

18 Q. They got to prove it. But some people would
19 say, "I hold them to a higher burden," or, "You know
20 what, that seems too high to me. I hold them to a
21 lesser burden." Would you follow the law on that
22 issue?

23 A. I'll follow the law on that issue. I mean,
24 you got to prove it, you got to prove.

25 Q. That's it.

1 of capital murder." No. Now, you may be submitted
2 lesser included, that is, we may submit to you
3 murder, we may submit to you robbery, we may submit to
4 you attempted robbery. That's unclear at this point.

5 But nonetheless, for the State to prevail
6 on the charge of capital murder, as they've alleged,
7 they've got to prove it all. Would you hold them to
8 that burden to prove it all?

9 A. Yes, I would.

10 Q. Okay. In other words, there's a number of
11 elements to capital murder and they don't just get
12 seven out of eight or eight out of nine, I don't
13 exactly what the number is, they got to run the table
14 on the deal to win. You understand that?

15 A. (Nods head.)

16 Q. And you would hold them to that?

17 A. (Nods head.)

18 Q. Yes?

19 A. Yes, I would.

20 Q. All right. Now, in a capital murder case,
21 assuming that there is a conviction, there's two
22 possibilities, life or death, okay? But the jury
23 doesn't say life or death. They don't -- they don't
24 go back and vote that way. Doesn't work like that.
25 We have two parts of a trial in criminal law in Texas.

1 A. And if you can't prove it, hey.

2 Q. If you can't prove it, that's it, he walks,
3 goes home. Okay.

4 Now, let's get to -- let's get to the
5 type of crime. This is a capital murder, okay? Well,
6 what's capital murder? Well, you have murder, which
7 is the intentional taking of the life of another. And
8 then you have capital murder, which is sort of like
9 murder plus. The legislature has said that certain
10 types of murders because of the way they are
11 committed, or -- or the circumstances, are capital
12 murder. And what's a capital murder? Well, that
13 means the death penalty is a possibility.

14 Now, in this particular case, they're
15 alleging capital murder because they allege, that is
16 the State, that a murder was committed in the course
17 of committing or attempting to commit a robbery, okay?
18 So we have robbery or attempted robbery, plus the
19 murder, okay? And for the State to prevail on a
20 capital murder or for them to get a capital murder
21 conviction they got to prove all of it. You follow
22 me?

23 A. Okay.

24 Q. They don't just get to prove murder and then
25 say, "Okay, well, that's good enough. Find him guilty

1 First part, guilt or innocence. All the jury does is
2 they sit and listen to whether the State can prove
3 beyond a reasonable doubt this Defendant is guilty or
4 not guilty. All right?

5 A. Okay.

6 Q. Defense doesn't have to do anything. They
7 may present some evidence, they may not. Jury hears
8 closing arguments. I read to you the Charge, which is
9 the packet of law, kind of like an instruction manual.

10 A. All right.

11 Q. You go back there and you deliberate and you
12 decide whether the State's proven their case beyond a
13 reasonable doubt. If the jury doesn't think so, and
14 they think Defendant's not guilty, they acquit him and
15 that's the end of the case, okay? If, however, the
16 jury believes that the State has proven beyond a
17 reasonable doubt Defendant is guilty of capital
18 murder, we go on to the second phase, okay? That's
19 the punishment phase, but we don't -- we don't -- like
20 I told you, the jury doesn't say death or life.

21 A. Right.

22 Q. Okay? They answer questions. And there's
23 question No. 1 right there over your right shoulder.
24 "Is there a probability that the Defendant would
25 commit criminal acts of violence that would constitute

1 a threat -- a continuing threat to society?" And the
2 jury would answer yes or no, okay?
3 A. All right.
4 Q. You with me?
5 A. Okay.
6 Q. Okay. Then if that -- once that's done, then
7 the jury answers the second question. And I just
8 dropped it on myself.

9 All right. "After taking into
10 consideration all of the evidence, including the
11 circumstances of the offense," which is the first part
12 of the case, --"

13 A. Right.

14 Q. " -- the Defendant's character and background
15 and the person's moral culpability, is there
16 a sufficient mitigating circumstance or circumstances
17 to warrant a sentence of life imprisonment, rather
18 than a death sentence be imposed," okay?

19 A. Right.

20 Q. So, basically, what is a mitigating
21 circumstance or circumstances? I don't know. That's
22 for the jury to decide. Maybe -- maybe this is the
23 only bad thing he's ever done in his life. Maybe he's
24 done a bunch. Maybe he's got a big criminal history,
25 maybe he doesn't. Maybe he's been a good person.

1 Maybe he's done a lot for the community, you know?
2 These are all things that you can consider, all right,
3 but it's up to the jury to determine what mitigating
4 circumstances are.

5 A. Right.

6 Q. You follow me?

7 A. (Nods head.)

8 Q. All right. Now, then the jury would be asked
9 to answer this yes or no, okay?

10 A. (Nods head.)

11 Q. You with me?

12 A. Yeah, I'm with you.

13 Q. Okay. Now, at the beginning of this trial, I
14 am going to ask the jurors to raise their right hand.
15 The jurors will take an oath, and the oath will be,
16 "Do you solemnly swear that you can render a true
17 verdict based upon the law and the evidence presented
18 to you?" I suspect they'll say yes.

19 What I'm asking you is that very
20 question. Can you take that oath in this case?
21 Because some people say, "Well, no, I can't take that
22 oath because I could never participate in a process
23 that could lead to the death penalty," okay? And then
24 other people might say, "Well, you know, I -- I could
25 participate in such a process, but if I found him

1 guilty of capital murder, these questions mean nothing
2 to me. I would always -- I would always answer them
3 in such a way that he'd get the death penalty because
4 I would -- I would never consider life. I would never
5 consider all this mitigating stuff you're talking
6 about. Just not going to do it."

7 So I need to know from you, could you
8 deliberate on guilt or innocence and could you
9 truthfully answer these questions?

10 A. Yes, I can truthfully answer those questions,
11 and, yes, I can...

12 Q. Consider all the evidence and --

13 A. Uh-huh.

14 Q. -- and wait before you make a decision on
15 guilt or innocence?

16 A. (Nods head.)

17 Q. Yes?

18 A. I took a oath to defend this country, so I
19 can take a oath to do what I need to do as my civil
20 duty.

21 THE COURT: Okay. All right. Well, I'm
22 going to turn the floor over to Mr. Skurka and he's --
23 goes first, because he's got the burden of proof.
24
25

VOIR DIRE EXAMINATION

2 BY MR. SKURKA:

3 Q. Hi, Mr. Starkey.

4 A. How you doing?

5 Q. As the Judge introduced me, my name is Mark
6 Skurka. This is Geordie Schimmel. We're both
7 assistant D.A.s, and we'll be the ones presenting this
8 case to you on behalf of the State, if you're selected
9 on this jury.

10 I want to start off by telling you
11 there's no right or wrong answers to anything you say.
12 Just answer the questions how you feel or how you --
13 what your true feelings are and no one's going to
14 argue with you or anything. We just want to know what
15 you feel, okay?

16 A. Okay.

17 Q. I'm going to ask you to move that microphone
18 just a little bit closer to you because you kind of
19 have a soft voice. I want to make sure we all hear
20 you.

21 A. All right.

22 Q. Okay, thank you. And that's the first
23 question I want to talk to you about because one of
24 the big issues in this case -- I think it's going to
25 be a big issue in this case -- is whether or not this

1 Defendant is going to get the death penalty or not. I
2 told you at the very beginning, you know, the State is
3 going to ask for the death penalty. After you hear
4 all the evidence, and everything, there's going to be
5 a point -- come to a point that that may happen.

6 I want to know how you feel about the
7 death penalty. You just tell me, in your own words.

8 A. Well, I did write that down in that brief,
9 okay. I do believe in the death penalty but because I
10 also a church goer and I also believe in the Bible,
11 that it's wrong to do that. But I know in society,
12 sometimes we have to render some type of judgement, if
13 that's the case. But I'll do what I have to do.

14 Q. It sounds to me -- and I don't want to put
15 words in your mouth --

16 A. Right.

17 Q. -- but it sounds to me like you're saying, "I
18 believe in the death penalty. My church says you're
19 really not supposed to take a life --"

20 A. Right.

21 Q. "-- but the law of the land is the law of the
22 land."

23 A. Yes.

24 Q. Is that a good way to say it or you --

25 A. It's not a good way to put it, but --

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1 Q. You tell me how you feel.

2 A. It's not a good way to put it, but these are
3 the laws I have to live with, okay? And, yeah, I can
4 say, yeah, I believe everything that the Bible tells
5 me and I'm not supposed to do this that or other, but
6 in life -- I'm not trying to sound like a hypocrite,
7 okay, but I got to do what I need to do because I live
8 in this world. And that's the bottom line, you know?

9 Q. And you live in a country --

10 A. And I live in a country that --

11 Q. -- that has this law.

12 A. -- that has this law.

13 Q. And so you -- I guess, you're -- you feel
14 obligated or duty-bound to uphold that law.

15 A. Yes, I do.

16 Q. Okay. Is that going to cause you any, oh, I
17 don't know, ill feelings about it, you know, or
18 thinking that maybe you're going against your church's
19 teaching or -- or something like that, or no?

20 A. Either way I can look at it, I can say,
21 "Yeah, I'm going against what the church is teaching,"
22 you know, because that -- that -- because I believe in
23 the Bible, but like I said, again, I still believe in
24 the law of the land, you know, and we got to work with
25 what we got to deal with.

1 I'm not going to have no ill feelings, as
2 per se. I'm not going to feel guilty, I have to do
3 my -- my civil duty, you know, but that's just
4 something I'm going to have to deal with the Man
5 upstairs when I get to see him, and He's going to be
6 the Judge against me, okay? That's what I have to
7 deal with.

8 Q. Uh-huh. Because I was looking at your
9 questionnaire and it did say your church is against
10 the death penalty, but you disagree, and that you said
11 something about it, you know, we have to honor the law
12 of the land, and I -- I think a lot of people feel
13 that way. I don't think it's just necessarily your
14 religion. There's some people, like, who are
15 Catholics, for example. The Pope says, you know,
16 we're against the death penalty or the Church is
17 against the death penalty, but then I've had a lot of
18 people come up to me and say, "Well, you know, I'm
19 Catholic, but I believe in the death penalty, because
20 it's the law, and, you know, I may disagree with the
21 Church on that one bit, because I think I need this.
22 It's not that I'm rejecting the Church's teachings --"

23 A. That is correct.

24 Q. "-- I just can't agree with that one." But
25 that's kind of --

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1 A. That's kind of the way, yeah.

2 Q. Okay. And there's nothing wrong with that, I
3 just need to know because some people are -- are
4 different. And there's no right or wrong answer, but
5 some people say, "You know, Mr. Skurka, I'm sorry, but
6 I'm just not going to be able to sleep nights, and --
7 and, you know, I feel bad going to church knowing that
8 I participated in this decision. I'm not going to be
9 able to face my pastor or my priest, or whatever."

10 That's not going to be you, though,
11 right?

12 A. No.

13 Q. Okay. You see where I'm coming from --

14 A. Yeah, I understand.

15 Q. -- because we need to know this because some
16 people, they say, "Yeah, I can do it," but then, in
17 the back of their mind, I don't want it messing up
18 their lives and thinking --

19 A. It's an internal -- it's an internal thing
20 for certain people, and it might be something internal
21 for me. But, like I said, God going to have to really
22 have judgment against me, --

23 Q. Well, --

24 A. -- if that's the case.

25 Q. -- say, for example, you were in the military

1 for 21 years.
 2 A. Yeah.
 3 Q. If were you in a war and you killed somebody?
 4 I had to -- to protect my unit, or to protect my life
 5 or to go out there and, say, like what's happening in
 6 Iraq and Iran right now. I mean, they going to have
 7 to go out there to fight to protect some people that
 8 they don't even know.
 9 Q. And if their church --
 10 A. And even --
 11 Q. -- says --
 12 A. -- even if their church says that even -- in
 13 the Bible it say -- what some of the guys take with
 14 them because I had a little green Bible what I took
 15 with me every time I was out, you still got to do what
 16 you got to do.
 17 Q. Okay.
 18 A. And it's -- so I may have some reservations
 19 about it, but when it gets down to it, if there's
 20 somebody shooting at you and you're shooting back
 21 because you're trying to protect yourself while you
 22 got a wounded man right there, you're trying to take
 23 care of yourself and this individual, you're going to
 24 do what you have to do.
 25 Q. Well, war is a certain thing. The Court --

1 A. It's a difference.
 2 Q. This is different, but it's still taking a
 3 life.
 4 A. Right.
 5 Q. But it's taking life, not just --
 6 A. Not just --
 7 Q. -- willy-nilly. I mean, --
 8 A. No.
 9 Q. -- we're going through a courtroom. We've
 10 got laws to uphold. He has good lawyers to defend
 11 him, and it's up to these 12 folks to make a decision.
 12 A. That is correct.
 13 Q. So it's okay with you to follow the law,
 14 then?
 15 A. Yes.
 16 Q. Okay. And -- and you see, I'm not trying to
 17 belabor the point, but you see where I'm coming from?
 18 A. Right.
 19 Q. I want to make sure that you don't just say
 20 "Well, yeah, I believe in the death penalty. I think
 21 it's good, but I don't know if I can carry it out."
 22 And that's kind of what I'm looking at because that's
 23 him.
 24 A. I understand.
 25 Q. Look at him, that's John Henry Ramirez.

1 A. I understand.
 2 Q. Not somebody out there in, you know, you hear
 3 about it in T.V. land or something like that. There
 4 may become a time because I told you the very first
 5 first day, our office has decided to seek the death
 6 penalty in this case. So there's going to be a time
 7 when I'm going stand in front of these 12 jurors and
 8 I'm going to ask them to find him guilty based on the
 9 evidence, and I'm going to ask them to give him the
 10 death penalty, answer the question in such a way he'll
 11 get the death penalty based on that evidence.
 12 And I just want to make sure you can --
 13 you can carry it through, if you think that's what's
 14 appropriate in this case. Can you do that?
 15 A. Yes, I can.
 16 Q. Well, I'm going to turn it around on you,
 17 now, because the other answer is if you think that the
 18 State doesn't prove the case, can you find him not
 19 guilty?
 20 A. Yes, I can.
 21 Q. All right. And if -- if you hear the
 22 evidence and think he should get a life sentence, can
 23 you give him a life sentence?
 24 A. Yes, I can.
 25 Q. It sounds to me like you want to carefully

1 consider everything before you make --
 2 A. Before I do anything.
 3 Q. -- any decision. Because I can guarantee you
 4 no one wants to be on a jury to make that of awesome
 5 decision.
 6 A. No, because you're dealing with somebody's
 7 life right there.
 8 Q. And you're right. But you also are dealing
 9 with upholding the law of the land, --
 10 A. Of the land.
 11 Q. -- too. So it's like -- we had a juror
 12 earlier say, "Look, I'm not going to be running to be
 13 first in line to be on this jury, but if have to do my
 14 civic duty, I have to do my civic duty."
 15 A. That is correct.
 16 Q. So you kind of feel that way, too.
 17 A. That's the truth. I mean, hey, nobody wants
 18 to ran and say, well, this, that or the other. I'd
 19 sit here like, "Man, I don't know." But, no, you got
 20 to do your job.
 21 Q. Well, see, we have people -- and I'm not
 22 saying there's nothing wrong with them -- anything
 23 wrong with them, but they'll say, "Yeah, I believe in
 24 the death penalty, Mark. I believe that it's good
 25 law. I believe we should do this, in bad cases we

1 should do it," and then they'll say, "But don't make
2 me do it. Don't make me sit there and do it."
3 A. Right.
4 Q. And that's -- and that's what I'm looking
5 for. You may agree with it, but if you can't do it,
6 you need to let us know. But you think you can do it
7 if it's necessary?

8 A. If it's necessary, yes.

9 Q. Okay. Tell me what you've heard of -- what
10 you thought -- first thought when you heard that this
11 was a death penalty case, when you came in that --
12 remember, that day where --

13 A. Uh-huh.

14 Q. -- we had like 2- or 300 people in here and
15 most people -- we didn't know what it was, or they
16 didn't know what it was till the Judge came and said,
17 "This is a capital murder case. This Defendant is
18 charged with capital murder --"

19 A. Right.

20 Q. "-- and if you're on this jury, you may have
21 to make that ultimate decision." What was your first
22 reaction to that?

23 A. Well, anybody would -- well, for me, I said,
24 "What did I walk into or what I got selected for?"

25 Q. Uh-huh. It is a surprise.

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1 A. Yes.

2 Q. Okay. After that initial surprise wore off,
3 what did you think?

4 A. Well, like I said and told you earlier, that
5 if that's what I got to do, that's what I got to do.

6 Q. So, it sounds like you're a person that does
7 his duty, being in the military for so long, and this
8 is a duty as a citizen, --

9 A. Yes.

10 Q. -- a civic duty. And you were in the Navy as
11 a chief petty officer?

12 A. Yes, I was.

13 Q. Is it true the chief petty officers really
14 are the ones that run the Navy?

15 A. Chief petty officers run the Navy, run ships,
16 run commands.

17 Q. I'm joking with you.

18 A. I know.

19 Q. I know they're the backbone. It's just like
20 in the Army, they say, what do you call the sergeants,
21 or something weird like that?

22 A. The sergeants, something like that.

23 Q. But the C.P.O.'s the ones that run the Navy.
24 So that's a lot of responsibility. You did that for
25 21 years.

1 A. 21 years.

2 Q. And then now you work at CCAD over here and
3 everything.

4 A. That is correct.

5 Q. Tell me about the time -- you said -- but it
6 also said you worked at a prison or a community
7 correctional facility in Louisiana --

8 A. Yes, I did. It was --

9 Q. -- for about a year or something? What was
10 that about?

11 A. -- off of Tulane Broad. It was like -- it
12 was a state and municipal and federal. It's like a
13 holding area for some -- also, for the boot camp, also
14 for people who got in trouble with drugs, and some
15 people waiting on municipal cases and some of them
16 waiting on state cases. And, basically, all I was was
17 a jailer.

18 Q. Uh-huh.

19 A. That's all. I basically with another -- they
20 called us "deputies" at the time, ran the tier for the
21 -- make sure they got their meals on time, make sure
22 that they went to their court cases, they got prepared
23 for court cases. I set them up for transportation and
24 received them back into our facility.

25 Q. You didn't work there very long, though, just

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1 a year or two?

2 A. It was about a year, year -- I say about a
3 year and a half. That's about what it was.

4 Q. Not your cup of tea or what?

5 A. No, because I was in the military. This was
6 my part-time job.

7 Q. I see. That was a part-time job --

8 A. Yeah.

9 Q. -- that you were in the military. So it
10 wasn't anything you were trying to have a career in
11 law enforcement or being a jailer, it was just --

12 A. I -- I thought about it.

13 Q. -- about a job.

14 A. I did thought about it after I got out, but
15 if I did, I probably was trying to go to -- probably
16 like I was trying to either go to the D.E.A. or
17 something to that effect.

18 Q. Uh-huh. I see your -- is it your daughter
19 that has applied for the U.S. Marshals, or something
20 like that?

21 A. Yeah, my daughter did. And right now she
22 doing some -- she works at an I.B.M. facility, getting
23 call services.

24 Q. Okay.

25 A. She was into resident, too, because she spent

1 a little stint in the Army.
 2 Q. Okay. So she was in the Army, too, huh?
 3 A. Uh-huh.
 4 Q. I mean, she was in the Army. How did you let
 5 her do that?
 6 A. I told her I'd let her slide.
 7 Q. Okay.
 8 A. But just the majority of my children, they --
 9 like my other daughter, she was into law enforcement
 10 in high school. They kind of like the law.
 11 Q. And your son?
 12 A. That's another story.
 13 Q. Okay, I understand. Well, you can never tell
 14 how people are going to turn out. Whether you got
 15 these kids, or not, sometimes they want to follow
 16 their -- their family in their jobs --
 17 A. And then sometimes they don't.
 18 Q. -- sometimes they don't. You just can't
 19 figure that out.
 20 I'm going to ask you a couple of
 21 questions about this incident you -- this run-in you
 22 had with the police where they pulled you and a
 23 neighbor over or something like that?
 24 A. Yeah.
 25 Q. Do you mind me telling you -- asking when

1 neighbor's not answering, I just said, "We're just
 2 driving around looking at the homes." And he said,
 3 "You know you're not supposed to be here." And I
 4 looked at him and I said, "Why are you not supposed to
 5 be here, if we're looking for homes? We ain't doing
 6 nothing," and the guy -- I don't know if the officer
 7 had a bad day or what, he just said, "Well, let me see
 8 your I.D. cards," and everything else. I said "Sure,
 9 ain't no problem," and my neighbor said, "What's the
 10 problem of stopping us, if we're just looking," and
 11 the next thing I know the guy got an attitude, "You
 12 keep on talking and I'll arrest you," and I just
 13 looked at him, like, "That don't make no sense, man,
 14 all we doing is driving around looking at homes. We
 15 are homeowners. We own homes, okay?"
 16 So I said -- we just gave him the cards,
 17 said, "No need to say nothing. Let's just get out of
 18 here."
 19 Q. Did it go any further past --
 20 A. No, it didn't go any past any further,
 21 besides me and him talking. And we was thinking about
 22 calling him all kind of things but a child of God,
 23 but, you know, but I -- that -- that didn't make any
 24 sense. I was thinking about it, I said, I mean,
 25 there's a man -- in my own mind, back of my head, I

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1 that happened, where it happened, that kind of stuff?
 2 A. That happened -- that's been awhile, about --
 3 I would say about, what, 2002 or 2003. We went
 4 looking around for homes.
 5 Q. Is that here in Nueces County?
 6 A. Yeah.
 7 Q. We lived off of -- off of Staples. We both
 8 lived across the street from one another. We just
 9 went just looking at homes, making a comparison, and
 10 we was pulled over by an officer because we went in
 11 one complex, I forgot what it's called, Huntington, or
 12 something like that.
 13 Q. An apartment complex --
 14 A. No, no.
 15 Q. -- or a home?
 16 A. Home complex. I'm trying to remember. The
 17 area's right there by H.E.B. It was by --
 18 Q. By that new H.E.B. Plus? That's Huntington
 19 Park.
 20 A. Yeah, Huntington Park. We just drove in
 21 there. We was looking at the homes. I said, "They
 22 looked pretty nice," I said, "Man, that would be a
 23 pretty little home," and before I know it, the officer
 24 came around and pulled us over. And guy got out of
 25 the car and said, "What are you doing?" I said -- my

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1 was saying to myself, I said, "I went to -- I went to
 2 different countries and I did everything else to
 3 protect this country and I got this idiot." I'm not
 4 saying whether he had a bad day or not, but, to me, he
 5 probably did. And all I wanted to do was look at some
 6 homes possibility and who knows, maybe later own I
 7 might have a chance to buy in that area.
 8 Q. Uh-huh.
 9 A. I said that's fine, I just -- put it to maybe
 10 he having a bad day and move on about my business.
 11 Q. But he didn't escalate it or make it any
 12 worse, right?
 13 A. He didn't escalate it any further and we
 14 didn't take it no further either.
 15 Q. Okay. Okay. Here's my question, and you
 16 probably know where it's coming from. There's going
 17 to be cops testifying in this case.
 18 A. Right.
 19 Q. There's going to be cops testifying. I don't
 20 think they're going to be all the witnesses, but, in
 21 every criminal case, you almost always have cops. But
 22 they're not going to be testifying like eyewitnesses
 23 who, you know, watched the crime or saw the crime, --
 24 A. Right.
 25 Q. -- they're just talking about how they did

1 follow-up investigation --

2 A. Uh-huh.

3 Q. -- and stuff like that. And I need to know,
4 Mr. Starkey, is that going to bother you to listen to
5 the cops testify?

6 A. No.

7 Q. Why not?

8 A. I don't take that one incident as everybody.
9 Everybody can have a bad day. I can be -- I can be
10 nice and chipper one day, and then all hell's breaking
11 loose behind me, and I may -- shoot, I'd be venting it
12 out on everybody else because they said, "Hello," or,
13 "What's going on." No, I just take that for what --
14 "You having a bad day, a moment, you keep going on
15 over there. You're not going to interfere with me.
16 I'll continue on doing what I need to do."

17 Q. Okay. You see, that -- you know, that sounds
18 like me when I come home to my wife, and I'll snap at
19 my wife sometimes because I have a bad day, and she's
20 like, "What are you biting my head off for," and I'm
21 not mad at her, I'm mad at something that's happened
22 at the office.

23 A. That's what I tell my wife and she says, "How
24 was your day," I'd say, "No, don't ask me how my day
25 was. I keep work at work. I'm home." And that's

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1 where I keep it. I'm not saying it's easy to do
2 sometimes, but I concentrate on doing that.

3 Q. So that's the only time you've had kind of a
4 run-in with law enforcement?

5 A. No, because I was speeding and I got pulled
6 over and I gave the guy what I needed to give him, and
7 I say, "Hey, I was wrong."

8 Q. Yeah.

9 A. You know, I'm not going to sit here and say
10 that I'm a virgin of doing anything, no. I've done
11 something wrong on that, and I say, "Hey, it's my
12 fault. I got -- that was me," and I pay the price.

13 Q. One time I was picking a jury and they were
14 all sitting out here, and I said, "Anybody had any law
15 -- run-in -- bad run-ins with law enforcement," and
16 guy goes -- a guy in the front row raised his hand,
17 and I go, "What happened," and he goes, "I almost got
18 arrested this morning on the way to jury duty," and I
19 said, "Oh, my gosh, what happened?" And it turns out
20 he went into a convenience store that had just been
21 robbed and he was wearing similar clothing to what the
22 guy who had robbed him, like, the -- what do you call,
23 the BOLO call said like blue jeans and a striped
24 shirt, and that guy was wearing blue jeans and a
25 striped shirt.

1 A. He fit the description.

2 Q. So the cops, you know, put him against the
3 wall and stuff, and after a few minutes they figured
4 out he wasn't the guy. But, you know, I go --

5 A. He fit the description.

6 Q. "-- Oh, my gosh, that happened to you today?"
7 And he goes -- I go, "Well, how do you feel about it,"
8 he goes, "Well, I'm not too happy with cops today, --"

9 A. Uh-huh.

10 Q. "-- you know? But -- but he did realize they
11 were doing their jobs. It matched the description,
12 and after a few minutes they detained him. And, you
13 know, they didn't really rough him up or anything, but
14 they were asking him pretty hard questions. And he's
15 like, you know, "What did I do?" And then he found
16 out -- they wouldn't tell him, at first, that's what
17 made him mad. And then he found out later that he was
18 -- matched the description of the guy, so then he kind
19 of understood.

20 So it sounds like that was something like
21 that, that it's going a little south, but it kind of
22 cooled off there for awhile. Okay. And you don't
23 think that's going to effect you at all?

24 A. No.

25 Q. Now, tell me about your daughter's situation.

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1 A. My daughter got pulled over -- not pulled
2 over. My daughter was -- my son had gotten into an
3 accident, and they called me and I said, "I can't get
4 to him, right now," so I said, I told my daughter, I
5 said, "Go over there and see what's going on with
6 the -- at the accident," because Kenneth was just 17,
7 and he didn't really know something like that and he
8 was involved in an accident, I mean, according to the
9 accident. If you get asked questions that don't mean
10 he may give a proper response because he also could be
11 in pain or from a concussion. That can do anything to
12 somebody because I had that, too.

13 Q. So you sent your daughter to kind of go check
14 on him.

15 A. My daughter is going to be -- she's going to
16 not be -- I just say, I don't know if she's considered
17 combative, or whatever, but my daughter's going to ask
18 questions, and she's going to defend her brother
19 because she knows he's been in an accident, she knows
20 he's ain't going to be totally coherent to
21 questioning, and she just wanted to give information.
22 And when -- after I got there, I just saw that my
23 daughter was getting arrested. And I said, "For
24 what," and she said, "The officer said for intervening
25 into an investigation." I said, "She's defending her

1 brother, she's asking because her brother may not know
2 the answer, so she's going to give the answers. I
3 sent her over here. If you're going to arrest
4 anybody, arrest me for telling my child to go check on
5 her brother."

6 Q. So what happened?

7 A. She got, what was that, charged with -- like
8 I said, again, she got charged with intervening in an
9 investigation. I tried to talk to the officer at the
10 time and the officer told me, said, "Well, it's up to
11 my partner." His partner says, "It's up to you." He
12 said, "Well, I'm taking her in." I said, "She was
13 just doing what I told her to do. If you want to take
14 somebody, take me, okay? She's following my orders.
15 And my children, two of the three listen, and she was
16 doing what she was told. That's all she -- she'll do
17 what she's instructed to do. If I tell her to do
18 something, it's just about almost guaranteed done or
19 she going to tell me why she couldn't get it done."

20 Q. So it's one of those things that maybe the
21 cops were doing the questioning and they didn't really
22 care who it was, they just didn't want anybody getting
23 in the way? You think it was that?

24 A. I -- I can't said yes or no, I don't know. I
25 wasn't there. All I do was trying to talk to the

1 officer, try and to get him -- get her released, but
2 instead, she didn't get released. So, we had to pay
3 court costs and fees, and everything else. And right
4 now she's still dealing with that.

5 Q. Did that happen a long time ago or recently?

6 A. That was -- well, she doing it right now.
7 She just got -- I say about a couple of months ago.

8 Q. Okay. So her case hadn't gone to court yet,
9 or anything?

10 A. No.

11 Q. And that's --

12 A. She's --

13 Q. -- happened here in Nueces County?

14 A. The case -- she's getting, what's that
15 pretrial diversion, working on going to everything
16 that she's supposed to do. She's going to classes,
17 community service --

18 Q. Okay.

19 A. -- and paying the fees and whatever.

20 Q. You -- you know what pretrial diversion is,
21 right? That means she won't have a conviction.

22 A. Yeah, but I'm worried about it, because she's
23 also still trying to get into law enforcement, but I
24 don't know if that conviction's going to be on her
25 record after that.

1 Q. No, it won't be. That's -- that's what
2 pretrial diversion is. So it won't -- it's more like
3 a contract and an agreement --

4 A. Right.

5 Q. -- between the Judge, the D.A.'s Office and
6 the probation department, that they do this kind of
7 informal probation. And then if they do it all, then
8 the case doesn't get filed.

9 A. It doesn't get filed?

10 Q. Well, it either gets filed and then dismissed
11 or it doesn't get filed at all.

12 A. Well, I hadn't had a chance talk to the
13 prosecutor, because if it was, I --

14 Q. You did or you didn't?

15 A. I didn't. I was hoping that if she did,
16 because she follow through with everything, I'm not
17 saying it would -- well, I'm saying this, that I hope
18 it doesn't get put on her record because she's still
19 trying to go for as law enforcement.

20 Q. Well, if she completes pretrial diversion, it
21 shouldn't -- you know. But I got to ask you this,
22 now, because our office was probably doing the
23 prosecution of it, the cops were in that, is anything
24 about that going to effect you being in this trial?

25 A. No, because nothing I can do about that

1 situation, and nothing my daughter could do, and all
2 we can do is abide by the law, and that's what we've
3 been doing. And if that pretrial diversion helps her
4 to do what she needs to do, fine. Yeah, it's money
5 out of people's pocket, but I'm still trying to obey
6 the law.

7 Q. Well, again, I just need to know if you have
8 a grudge against the cops or the D.A.'s Office for --
9 for that?

10 A. No, I just -- the only thing I have is that
11 maybe they should have just taken consideration what
12 was happening, what was considered -- what actually
13 happened, --

14 Q. Yeah.

15 A. -- what the child was doing.

16 Q. Well, I've never been a cop, but I also --
17 but I know cops, you see them when they're trying to
18 control the scene and other people are kind of coming
19 over and trying to talk to them --

20 A. Right.

21 Q. -- and question them. They don't really want
22 to hear that then, they just move everybody away
23 because I guess that's the way they're taught, or
24 something like that, and -- and sometimes they make
25 poor choices, too, and everything that maybe not been

1 done. But then sometimes I always say, "Well, you got
2 to look at their perspective. They may be trying to
3 work the accident case and then somebody's nagging on
4 them, or something like that, or they just don't want
5 to hear that." I mean, I'm not trying to defend them,
6 I'm just saying --

7 A. No, I understand that.

8 Q. -- sometimes that happens.

9 A. I have to take that into consideration, too,
10 because, in doing my job, I have people telling me
11 this and this. And I say, "No, this is what I'm
12 instructed to do, this is what I have to do, this is
13 what I'm going to do. Now, if you want to throw in
14 some other interference in here, you got to get some
15 clarification from somebody else. Until this time,
16 this is what I'm supposed to do."

17 Q. Okay. Tell me about how you feel about the
18 fact that it's not an automatic decision in this case.
19 Remember, the Judge said a lot of times people think
20 that just because you're found guilty of capital
21 murder you automatically get the death penalty, and we
22 have to tell them no, you don't automatically get
23 anything. What happens is, first of all, they have to
24 be found guilty of capital murder.

25 In this case, it would be murder plus

1 commit criminal acts of violence that would constitute
2 a continuing threat to society?" In other words, is
3 there a chance, is it likely that this Defendant is
4 going to hurt somebody else in the future, hurt
5 somebody else in our society? And unless you have a
6 crystal ball, you don't know for sure what's going to
7 happen, and the question says, "probability." It
8 doesn't say for sure he's going to do it. So the law
9 doesn't require me to prove a hundred percent he's
10 going to do that.

11 The law also says, "would commit criminal
12 acts of violence." Sometimes people say, "Well, I can
13 only give the death penalty if I think he's going to
14 murder somebody again." Doesn't say you have to
15 murder, it just says "any criminal act of violence,"
16 if he's beating them up or hurting them or taking
17 something from them or something like that.

18 And the final part says, "a continuing
19 threat to society." And some people say, "Well, Mr.
20 Skurka, why don't you just lock him up in prison for
21 life, that way he won't hurt anybody," and I say,
22 "Wait a minute, who else is in prison?" You used to
23 work in one.

24 A. Uh-huh.

25 Q. There's guards there, there's probably

1 robbery. And that means killing somebody while in the
2 course of committing or attempting to commit robbery.
3 In other words, they were trying to rob them or did
4 rob them and killed them at the same time. Then --
5 that's the first part of the trial, is he guilty or
6 not, did he do it or not?

7 Then the second part of the trial is what
8 kind of punishment he should get. And it's by no
9 means automatic. You have to answer two questions.
10 You may get to hear additional evidence that says,
11 "Well, this guy's a bad guy or this guy's a good guy.
12 You know, maybe he was an Eagle Scout, maybe he made
13 good grades in school, or maybe he's been in prison
14 ten times before." You can't really make that
15 decision on death or life until you hear some more
16 background.

17 Now, you can make a decision based on
18 what happened that day or what happened that day, plus
19 his background, but the problem is -- the question is,
20 you can't make the decision just automatically. You
21 have to hear this -- you wait till you hear everything
22 and make a decision. And that's what those issues --
23 special issues talk about.

24 The first one down on that board says,
25 "Is there a probability that the Defendant would

1 civilian employees, you know, like clerks or the
2 warden, there's probably medical people or maintenance
3 people, or something like that. In other words,
4 you're not isolated. It's not like you're putting him
5 on a desert island where you never have contact with
6 human beings again. So prison is actually part of
7 society. You've got some of your rights taken apart
8 -- I'm sorry, taken away, but that doesn't mean you
9 don't interact with society, right?

10 A. Yeah, that's correct.

11 Q. So have you ever heard about that happening,
12 like, maybe somebody in prison hurting another
13 prisoner?

14 A. Yes.

15 Q. Or hurting a guard?

16 A. Yes.

17 Q. Or hurting a civilian employee? I mean, that
18 happens, right? So would you agree with me that just
19 because you put them in prison doesn't mean they'll
20 necessarily never have a chance to hurt anybody else
21 again, right?

22 A. That is true.

23 Q. Okay. And that -- you probably saw that
24 firsthand when you worked at the jail that you worked
25 at or the holding facility.

1 So the Judge asked you to listen to all
2 the evidence and then decide is he a danger in the
3 future, is he going to hurt -- is there a chance he
4 could hurt somebody in the future? Doesn't mean a
5 hundred percent, you know that for sure because no way
6 you could prove that, but do you think he's going to
7 hurt somebody down the line?

8 The second question is what's called
9 "mitigating circumstances question." Mitigating
10 basically means anything that would lessen or make
11 less severe the punishment. In other words, he did
12 the crime, but is there any reason, any mitigating
13 circumstances that warrant that we should give him
14 life instead of death? In other words, it looks like
15 he's heading for the death penalty. You found him
16 guilty of capital murder. You look at this first
17 question, it says, "Yes, I think there's a chance he's
18 going to hurt somebody down the line," but before you
19 give the death penalty, you have to take into
20 consideration all of the evidence, including what
21 happened that day, the circumstances of the offense
22 and the surrounding circumstances, his character and
23 his background, you know, is he a good guy, is he a
24 bad guy, has he been to prison ten times before or
25 never been to prison before, his personal moral

1 ripped up stuff and just tore up the whole house. And
2 then you also hear in the evidence that that guy, it's
3 not been his first burglary. He's been to burglary --
4 he's been convicted of burglary five times before.
5 Second case. The second scenario, it's a
6 burglar. He broke into somebody's house and stole
7 something that didn't belong to him, which is what
8 burglary is, but you find out he didn't kick a door or
9 break a window to get in, the door was unlocked. When
10 he came in the back door it was unlocked, and even
11 though the house had jewelry, money, T.V., stereos and
12 stuff, what the guy did was go into the pantry and
13 stole a loaf of bread and some food to feed his kids
14 who were hungry because he had lost his job. He
15 by-passed all that other stuff and all he stole was
16 food. And you find out his background is this, that
17 guy's never been arrested for anything, this is the
18 first time he's ever been charged with anything.

19 So, both of them burglars. Do you treat
20 them both the same?

21 A. No.

22 Q. No. Why not? One's got aggravating factors,
23 one's got mitigating factors. That's the best way I
24 can explain what a mitigating circumstance. Is it
25 something like in his background or the surrounding

1 culpability. Is there enough, is it sufficient
2 mitigating circumstance to warrant that a sentence of
3 life, rather than death imposed -- impose, because it
4 looks like he's going for the death penalty. He's
5 guilty, he's a continuing threat to society, but
6 before you give him the death penalty, you have to
7 review all the evidence and say "Is there anything
8 that would warrant he get a life sentence, a lesser
9 sentence than the death sentence?"

10 In other words, not everything's equal,
11 right?

12 A. Right.

13 Q. Some people may have mitigating circumstances
14 that point to them getting a life sentence. Some
15 people may have aggravating circumstances, make it
16 worse, you know. And that's what this question is all
17 about.

18 Here's an example. Say you have two
19 burglars, you're sitting on a jury and there's two
20 different burglary cases. The first burglar is a guy
21 who kicked in the back door of the kitchen, broke the
22 door off the hinges, went into the house, stole all
23 the jewelry, all the money, all the T.V.s, V.C.R.s,
24 stereos, all that stuff. And then as he was leaving
25 the house he ransacked the house and broke things,

1 circumstances which would -- that would warrant that
2 the jury gives him life instead of death? That's --
3 remember the Judge was saying it's not automatic, you
4 got to listen to everything?

5 A. Yes.

6 Q. I mean, what if the guy was a war hero, maybe
7 you'd want to give him a break because of that; maybe
8 the guy was a -- came from a broken home, or, you
9 know, made straight A's in school; or maybe he's been
10 to prison ten times before, maybe he's hurt other
11 people, too. You got to look -- weigh all that stuff.
12 And that's what the Judge tells you to do in this
13 case. Looking at all that stuff, is it enough to
14 warrant that he gets life instead of death?

15 So you kind of got to do a further
16 balancing test. Just because there's a mitigating
17 circumstance, does that mean he automatically gets --

18 A. No.

19 Q. -- a life sentence? No, that's up to the
20 jury to decide. Some jurors may say, "Well, you know,
21 we ought to give him a break because he was an Eagle
22 Scout and he made good grades in school." Some jurors
23 may say, "Hey, I don't care if he was an Eagle Scout
24 or made good grades in school, that's not enough for
25 me to lower the sentence. He's still got to answer

1 for this crime he did." You see what I'm saying.
 2 This Judge is not going to say, "Well, this is a
 3 mitigating circumstance because he's young or this is
 4 his first time offense, so you have to automatically
 5 lower it," that's up to the jury to decide.

6 I kind of like to tell people like checks
 7 and balances, it kind of checks the jury to say check
 8 it over one more time, see if he really -- is there
 9 anything that makes him get a lower sentence? If
 10 there is, there is. If there isn't, there isn't. But
 11 we can't tell you what it is, it's up to the jury to
 12 decide. You-all have that power to do that stuff.

13 Now, one thing that may come up is this
 14 fact, or this law, "Voluntary intoxication is not a
 15 defense to crime." Voluntary intoxication. In case
 16 -- in other words, if you go get yourself drunk or
 17 stoned or high on drugs and you commit a crime, is
 18 that an excuse to the crime? Absolutely not. The law
 19 says absolutely not, but it may be something that you
 20 would be a -- considered a mitigating circumstance.
 21 Somebody may say, "Well, he robbed that bank, but he
 22 was drunk when he robbed that bank, so we're going to
 23 give him a break." Other people may say, "Just
 24 because he's drunk, he still robbed the bank, you
 25 know?" You got to -- that could be a mitigating

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1 circumstance.

2 All you have to do is have an open mind
 3 and listen to those things. What you do with them is
 4 up to you, okay? But that's a way to give the jury a
 5 chance to consider, "Hey, is there any reason we
 6 should lower it to life instead of death," okay?

7 So if you answered the first question
 8 yes, he's a continuing threat to society, and no,
 9 there's no reason to lower the sentence, or it's not
 10 enough reason to lower the sentence, that man over
 11 there is sentenced to death. If you answer it any
 12 other way he gets a life sentence. Do you follow me
 13 with that scheme?

14 A. Yes.

15 Q. Does that kind of make sense to you about
 16 considering the -- because I gave you that trick
 17 question with the burglars, you think both burglars
 18 are pretty bad, then you find out, "Hey, there's
 19 extenuating circumstances," right?

20 A. (Nods head.)

21 Q. Maybe go higher, maybe go lower.

22 Do you think we should have the death
 23 penalty in Texas? Because some states have the death
 24 penalty and some states don't.

25 A. It's the law of the land.

1 Q. The law. Okay, and you -- you say in here,
 2 too, in your questionnaire I'm looking at, it says you
 3 don't think the death penalty is given often enough.
 4 Why is that?

5 A. I guess that got explained to me, what I may
 6 consider giving somebody the death penalty because,
 7 like you said, if it's not like capital murder, like
 8 somebody -- he murdered somebody --

9 Q. Just regular murder?

10 A. Yeah, that got explained to me. So, on that
 11 question --

12 Q. You were thinking it was all murder cases?

13 A. Yeah, I did.

14 Q. Don't feel bad. There's a lot of people that
 15 think -- people still come up to me and say, "Well,
 16 this is murder. Why didn't you get the death
 17 penalty," and I go, "Hey, only a very few cases
 18 qualify for the death penalty." You know, the
 19 legislature has said only those certain cases, like
 20 murder plus robbery, rape, murder, killing a police
 21 officer on duty, not just a regular killing is a death
 22 penalty. So that's kind of what you meant on that.

23 A. Yeah.

24 Q. I guess -- oh, a couple of other legal things
 25 I want to talk to you about are the fact that he's

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1 been indicted. That doesn't mean he's guilty, right,
 2 --

3 A. Right.

4 Q. -- that it just means he's charged. And you
 5 understand he's presumed innocent at this point --

6 A. Until proven guilty.

7 Q. -- till he's proven guilty. Doesn't mean he
 8 is innocent, it just means at this point he starts out
 9 presumed innocent.

10 And the Fifth Amendment, he doesn't have
 11 to testify if he doesn't want to and you can't hold
 12 that against him.

13 A. Right.

14 Q. Some people say, "Well, I want to hear his
 15 side of the story," and the Judge says, "If he doesn't
 16 testify you can't hold that against him." Can you
 17 follow that law?

18 A. Yes, I can.

19 Q. And beyond a reasonable doubt, that's the
 20 standard we have in this case and every case. The
 21 State always has to prove the case beyond a reasonable
 22 doubt. All it means is that -- it doesn't mean beyond
 23 all doubt or any doubt or a shadow of a doubt.
 24 There's no way I could prove it to you a hundred
 25 percent, unless you were a witness and saw the whole

1 thing yourself, then you wouldn't be able to be on the
 2 jury.
 3 So you think you can be fair to both
 4 sides?
 5 A. I can be fair --
 6 Q. Listen --
 7 A. -- to both sides.
 8 Q. -- to everything and make a decision based on
 9 the evidence?
 10 A. Based on the evidence and what is put there.
 11 Q. Okay. And then follow through whatever that
 12 decision is.
 13 A. (Nods head.)
 14 MR. SKURKA: Okay. Thank you, sir.
 15 THE COURT: All right. Mr. Garza? Or
 16 who's up?
 17 MR. JONES: Yes, your turn.
 18 VOIR DIRE EXAMINATION
 19 BY MR. GARZA:
 20 Q. Mr. Starkey, my name is Ed Garza, and I had
 21 introduced myself back about a week or two ago, I
 22 guess, when we were down there in that big room and
 23 you guys came in and filled out this questionnaire.
 24 A. Yes, sir.
 25 Q. My Co-Counsel over here is Mr. Grant Jones,

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1 who wasn't there that day, and, of course, our client
 2 is sitting right there next Mr. Jones, Mr. John Henry
 3 Ramirez.
 4 Sir, is there anything at all that would
 5 keep you from being fair and impartial in this case?
 6 A. I try to be fair at all things in my life, so
 7 nothing, I don't think, is going to interfere with
 8 that.
 9 MR. GARZA: Thank you, sir. I don't
 10 think I have any questions of you. I think you've
 11 done a good job of answering all of our questions.
 12 THE COURT: All right. Why don't you
 13 wait in the jury room and I'm going to talk to the
 14 lawyers.
 15 VENIREPERSON NO. 31: Yes, sir.
 16 THE COURT: Wait just a second.
 17 (Venireperson exits courtroom.)
 18 THE COURT: All right, Mr. Skurka?
 19 MR. SKURKA: Judge, we're going to
 20 exercise a peremptory strike.
 21 THE COURT: Okay. All right. Bring him
 22 in.
 23 (Venireperson enters courtroom.)
 24 THE COURT: Mr. Starkey, you did not get
 25 selected to be on this jury, but we do appreciate your

1 time and service to the community.
 2 VENIREPERSON NO. 31: Thank you, sir.
 3 THE COURT: Thank you very much. If you
 4 need a work excuse, the bailiff can help you with
 5 that.
 6 (Venireperson exits courtroom.)
 7 THE COURT: All right. Let's see, the
 8 next person, I guess, is Noe Benavidez.
 9 MR. SKURKA: No. 34?
 10 THE COURT: Uh-huh. Is Mr. Noe Benavidez
 11 in?
 12 THE BAILIFF: Yes.
 13 (Venireperson enters courtroom.)
 14 THE COURT: All right, come forward and
 15 have a seat.
 16
 17 VENIREPERSON NO. 34,
 18 NOE G. BENAVIDEZ,
 19 VOIR DIRE EXAMINATION
 20 BY THE COURT:
 21 Q. All right. You are Noe Benavidez?
 22 A. Yes, sir.
 23 Q. All right. All right, Mr. Benavidez, we want
 24 to talk to you a little bit. Now, Mr. Benavidez,
 25 obviously you know we're looking to pick a jury, here,

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1 all right? And what we're looking for are for jurors
 2 that can keep an open mind, all right? Because if --
 3 I mean, you agree with me that if someone can't keep
 4 an open mind, they've already made up a decision and
 5 they have -- we haven't started the case, that's not
 6 fair to one side or the other.
 7 A. Yes.
 8 Q. And you'd agree with that, right?
 9 A. Yes, I do.
 10 Q. All right. So we're looking for people that
 11 can keep an open mind, people that are willing to give
 12 a fair shake to this case. So, is there anything,
 13 maybe, that you've heard in the past or for whatever
 14 reason that maybe you feel you can't keep an open mind
 15 in this case?
 16 A. No.
 17 Q. Okay. Then let's talk a little bit about the
 18 law and can you follow the law. All right, this is a
 19 criminal case. You have been a juror in a criminal
 20 case before.
 21 A. Yes.
 22 Q. And, in fact, the jury was asked to assess
 23 punishment in that case.
 24 A. Yes.
 25 Q. Okay. So you know a lot of the concepts

1 we're talking about. Like, first of all, it's the
 2 State's burden of proof. You understand that?
 3 A. Yes.
 4 Q. Okay. Because you -- that's how it was in
 5 the case that you did, and you understand that the
 6 burden of proof in every criminal case is beyond a
 7 reasonable doubt. Do you remember that?
 8 A. Yes.
 9 Q. All right. And that the State must prove
 10 each and every element beyond a reasonable doubt. You
 11 agree with that?
 12 A. Yes.
 13 Q. And you would hold the State to that burden?
 14 A. Yes.
 15 Q. Okay. Now, if you've sat on a jury before,
 16 and it was three years ago, so it wasn't that long
 17 ago, you -- you know that every person is presumed
 18 innocent until the State proves they're guilty.
 19 A. Yes.
 20 Q. Do you agree with that?
 21 A. I agree.
 22 Q. All right. And you could presume that this
 23 Defendant is innocent until the State proves, if they
 24 can prove that he's guilty.
 25 A. Yes.

1 A. Right.
 2 Q. -- because you participated in that before.
 3 Now, in that case, you say, I guess, jail
 4 time was assessed, and you know that in most criminal
 5 cases when the jury is asked to assess punishment,
 6 there's a punishment range, right?
 7 A. Right.
 8 Q. I don't know what level this was, but there's
 9 a punishment range. Was this a misdemeanor that you
 10 were on or was it --
 11 A. It was a drug.
 12 Q. Drug case, okay. But there's a certain
 13 amount of time in -- in custody that -- and -- and the
 14 Judge tells you, you know, this is the amount of time
 15 that you can -- these are the punishment ranges, you
 16 know, we give two to ten years, you decide where it
 17 falls if you get to the punishment phase, right?
 18 A. Yes.
 19 Q. Okay. Capital murder's a little different
 20 because that's what this is. In a capital murder
 21 case, we don't do it that way. We do it a little
 22 different. We answer questions, okay? And I'm going
 23 to talk about those in a minute.
 24 But what is capital murder? Okay, well,
 25 I like to call it murder plus, all right? So we've

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1 Q. Okay. Then the next thing, he doesn't have
 2 to testify. Law says, "Look, State, if you got to
 3 prove the case and the burden never shifts over here,
 4 then he doesn't have to testify." And there's lots of
 5 reasons why a person may not want to testify. Maybe
 6 his lawyer has told him not to, maybe his lawyer's
 7 said, "Hey, they haven't proven their case. We don't
 8 need to testify." Maybe he's uneducated, maybe he's
 9 -- maybe he's not the best speaker, maybe he gets
 10 nervous, okay?
 11 What I need to know from you is would you
 12 follow the law that says I wouldn't hold it against
 13 him if he didn't testify, or would you hold it against
 14 him?
 15 A. I would not hold it against him.
 16 Q. Okay. And you've gone through this before in
 17 that prior case, which gets me to the next point.
 18 You -- you actually were asked to do the punishment
 19 phase of the trial, were you not?
 20 A. Yes.
 21 Q. Okay. So you know that there's a bifurcated
 22 system, that is, we have the guilt or innocence part
 23 first. If Defendant's found not guilty, well, we go
 24 home, but if he's found guilty, then we go to the
 25 second part, right --

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1 got murder, and you know what that is, right, that's
 2 killing somebody else intentionally.
 3 A. Yes.
 4 Q. And -- but, yet, you have plus. In this
 5 case, they're alleging, that is the State, that the
 6 Defendant committed this murder while attempting to or
 7 while committing a robbery at the same time. So it's
 8 robbery or attempted robbery plus a murder. Murder
 9 plus, okay.
 10 State has to prove all of the elements of
 11 both crimes and they have to prove that it's all
 12 together for them to prevail on a capital murder
 13 charge. You understand that?
 14 A. Yes.
 15 Q. Okay. Would you hold them to that burden?
 16 A. Yes.
 17 Q. Okay. Now, let's talk a little bit about how
 18 this works. You find -- let's -- you know, of course,
 19 that if you find him not guilty, then we go home, it's
 20 over with. But if you find him guilty, then we go on
 21 to the second phase. And you've done this before,
 22 but, like I said, it's a little different. You don't
 23 say -- I can tell you the two possibilities are life
 24 or death, if -- if -- if the Defendant's found guilty
 25 by this jury, okay?

1 A. Okay.

2 Q. Life imprisonment or death. But you don't

3 say life or death like you did in your case, you

4 answer questions. And here's Question No. 1, "Is

5 there a probability that the Defendant would commit

6 criminal acts of violence that would constitute a

7 continuing threat to society," okay? Jury would

8 answer it yes or no. Then after they answer that

9 question, then you go over and there's Special Issue

10 No. 2. "After taking into consideration all of the

11 evidence, including the circumstances of the offense,"

12 which is the facts of the case, the guilt or innocence

13 part, okay, "plus the Defendant's character and

14 background and the personal moral culpability of the

15 Defendant, is there sufficient mitigating circumstance

16 or circumstances to warrant a sentence of life

17 imprisonment, rather than a death sentence be

18 imposed," and then the jury would answer yes or no.

19 And what's that question about? Well,

20 you know, you may hear stuff about his past, not just

21 what happened that day, not just the crime itself, but

22 what kind of guy is he? Is he -- has he been a good

23 guy, has he been a bad guy? Does he have a lot of

24 criminal history, does he not have any? Has he done

25 things for the community, you know, stuff like that.

1 answer these questions? And before you answer that,

2 I -- some people tell me, "Well, I can't do that

3 because I can't participate in the process that would

4 lead to someone's death, potentially," or they say, "I

5 can't do that because if we find them guilty of

6 capital murder, I don't care about this question

7 nonsense, I'm going to -- I'm going to recommend the

8 death sentence no matter what. I'm not going to

9 consider anything that you guys bring me."

10 I need to know if you can truthfully

11 answer those questions, or would you fall into one of

12 those other categories where you just can't consider

13 the death penalty, you can't participate in a process

14 that would possibly result in the death penalty or you

15 wouldn't consider life imprisonment?

16 A. I would be able to truthfully answer both of

17 those questions.

18 THE COURT: Then with that, I'll turn the

19 floor over to Mr. Mark Skurka.

20 VOIR DIRE EXAMINATION

21 BY MR. SKURKA:

22 Q. Hi, Mr. Benavidez.

23 A. Hello.

24 Q. My name is Mark Skurka, as the Judge

25 introduced me. I'm a first assistant district

1 And the jury gets to decide what they believe is a

2 mitigating circumstance or not.

3 Maybe they think -- maybe -- maybe things

4 like that are presented to you but you had don't find

5 them mitigating circumstances, maybe -- maybe you do,

6 okay, but that's what the jury does, okay, and you'd

7 answer that question yes or no. You follow me?

8 A. Yes.

9 Q. Okay. Now, at the end of -- well, when we

10 begin this trial at the end of jury selection we're

11 going to get a jury and they're going to sit right

12 over there, and I'm going to ask them to take an oath,

13 and the oath is going to go like this, "Do you

14 solemnly swear that you can render a true verdict

15 based upon the evidence and the law presented to you?"

16 I suspect they'll say yes, all right?

17 So I got to ask you right now, can you

18 render a true verdict, that is on guilt or innocence,

19 based upon the evidence and the law presented to you

20 in this case?

21 A. Yes.

22 Q. Okay? And can you truthfully answer these

23 questions? And before you answer that, if you get to

24 the second half of the trial, that is, the Defendant

25 is found guilty, I'll -- the question is can you

1 attorney. This is Geordie Schimmel, he's another

2 assistant D.A., and together we'll be presenting this

3 case to you, if you're selected on this jury.

4 Start off by telling you there's no right

5 or wrong answers. You just tell us how you feel about

6 certain things. Don't answer in such a way that you

7 think I had want to hear, the Defendant wants to hear.

8 You just tell us how you feel and we'll deal with

9 that. Fair enough?

10 A. Yes, sir.

11 Q. Okay. I'm going go through this stuff,

12 that's going to be some -- some questions that you may

13 have not had to consider before, but we want to kind

14 of pin you down on some of these things, not to pick

15 on you or anything, but just to kind of feel -- feel

16 you out on how you feel on these things.

17 And the first thing I want to ask you

18 about is the death penalty. I mean, I've told you-all

19 at the very first day that the State is going to ask

20 for the death penalty in this case if we prove the

21 case beyond a reasonable doubt. So, tell me, how do

22 you feel about the death penalty in general?

23 A. I feel I could give somebody a death penalty

24 if there was the evidence to warrant that.

25 Q. Okay. Do you have any hesitation or

1 reluctance to do the death penalty if it's called for?
 2 A. I would have some hesitation, but I feel with
 3 -- if there was a enough evidence and without a doubt.
 4 Q. That's a good -- that's a good answer at the
 5 part where you say you should have some evidence.
 6 Nobody is happy about doing this, right?

7 A. Yes.

8 Q. I mean, it's a pretty serious case. It's an
 9 awesome responsibility to have the 12 people on the
 10 jury make that decision. But I want to know is if the
 11 evidence is proven to you beyond a reasonable doubt,
 12 can you go through with it?

13 A. Yes.

14 Q. Okay. You see where I'm getting at? Because
 15 sometimes people will tell me, "Mark, I believe in the
 16 death penalty. It's a good law. I'm glad we have it.
 17 Yes, I believe in the death penalty. That guy's a bad
 18 guy. He should be executed," and then I say, "Okay.
 19 You get on the jury and do it," and they go, "Wait a
 20 minute, not me, not me. I don't want to have to do
 21 that." And I'll be honest with you, Mr. Benavidez,
 22 that's him, right there. Look at him. That's John
 23 Henry Ramirez.

24 There's going to be a time in this trial
 25 where I'm going to ask you to listen to all the

1 decision. How -- how did you feel when you first
 2 heard that it was going to be this kind of case?
 3 Remember, a couple of weeks ago when all those people
 4 in that room and the Judge said, "This is a capital
 5 murder case. You may have to decide whether this
 6 person lives or dies?" What struck you, Noe
 7 Benavidez', you know, first thought when that heard --
 8 when you heard it was that kind of case?

9 A. Well, you know, capital murder case, you
 10 know, they'll tell you that will lead to that, the
 11 life or possibly death sentence.

12 Q. But how did you feel about being part of the
 13 process maybe?

14 A. Not good, in a way, because I know if I got
 15 -- as a juror, that that would be a very hard decision
 16 to make.

17 Q. Uh-huh. What do you mean?

18 A. Well, somebody's life is at stake. I mean,
 19 either way, right, life sentence is not -- not a piece
 20 of cake, but also being executed is -- is not good.

21 Q. Uh-huh. And so what you're saying, it would
 22 be a tough decision.

23 A. Very tough.

24 Q. Very tough. Is it a -- is it something
 25 that's doable, based on the evidence, though?

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1 evidence and make a decision where he gets put to
 2 death. Do you think you can follow through on that if
 3 the evidence is there?

4 A. Yes.

5 Q. Okay. And the answer -- the other part I
 6 need to ask you is, if the evidence is not there, can
 7 you give him a life sentence?

8 A. Yes.

9 Q. Okay. In other words, you're not leaning one
 10 way or the other, correct?

11 A. That's correct.

12 Q. And when you look at a person, can you -- do
 13 you make a decision on how a person looks or what a
 14 person does or did?

15 A. No.

16 Q. Well, it's like some people say, "Well, gosh,
 17 you know," that first day you probably said, "he looks
 18 kind of young, or he doesn't look like that bad a
 19 guy." Do you agree with me that you can't make a
 20 decision on what he looks like, that you should make a
 21 decision on what the evidence is that he did or didn't
 22 do?

23 A. Yes, I'll wait for the evidence.

24 Q. In other words, you can't judge a book by its
 25 cover. You can't just look at somebody and make a

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1 A. Yes.

2 Q. In other words, there's some people that say,
 3 like I said, "Don't make me do it. I believe in it,
 4 but don't make me do it." Some people can talk the
 5 talk, but they can't walk the walk. They'll say,
 6 "Yes, I believe in the death penalty. Yes, it's good.
 7 Yes, it's this, but don't make me do it." Do you
 8 think you could do it if the evidence called for it?

9 A. Yes, I think I can do it.

10 Q. And I agree with you that it's not easy, it's
 11 a tough decision. But the question is, you know, I'm
 12 looking for people that can actually follow through on
 13 it and do it if it's called for. And if you can't do
 14 it, that's fine, too. Just let me know if you can do
 15 it or not.

16 A. Yes, I can -- I feel I could do it.

17 Q. Okay. No problem. I don't want to say no
 18 problem because no one's happy about making that
 19 decision, right?

20 A. Right.

21 Q. But it's -- it's like one of those things
 22 that, you know, it's your civic duty to listen to all
 23 the evidence and make a decision. Do you think we
 24 should have the death penalty in Texas?

25 A. Yes.

1 Q. Why?

2 A. I think that would deter a lot of the crimes.

3 Q. So, if you had a choice to vote, like, if

4 you're in the legislature and the government and you

5 had to vote for or against the death penalty, you

6 would vote to keep the death penalty.

7 A. On certain crimes, yes.

8 Q. Yeah. You know what, that's a good point.

9 You said, "On certain crimes." Because the law says

10 it is only on certain crimes. Did you know that

11 before you came in jury duty, or did you think all

12 murder cases could get the death penalty?

13 A. I thought all murder cases.

14 Q. And a lot of people think that, and I always

15 tell them, "Well, you know, when you say 'only certain

16 cases,' that's what the law says. I can't just go in

17 there and say, 'Okay, you murdered somebody, we're

18 going to seek the death penalty.'" It's got to be one

19 of those special classes of murder cases, like, murder

20 plus something else, like robbing, raping, kidnapping,

21 burglarizing somebody. You know, and I can't even

22 make that decision or the Judge can't even make that

23 decision on whether to give the death penalty.

24 You know who they put that decision with?

25 A. (No response.)

1 Q. The jury. The jury is the only one that can

2 make the decision whether a person gets death or life.

3 You answer some certain questions, but by those

4 questions you-all determine whether the person gets

5 death or life. You understand that?

6 A. Yes.

7 Q. It's not the Judge's decision, not the D.A.'s

8 decision. It's up to the jury. So if it's any

9 consolation to you, it's not you being responsible

10 yourself, it's 12 people that make that decision, as

11 citizens, which is probably the way it should be,

12 don't you think?

13 A. Yes.

14 Q. Yeah, you don't want to give the power to

15 just one person, you want to have the power spread out

16 to 11 jurors of his peers.

17 Sometimes people tell me, "Mark, you

18 know, we're such a civilized society now. We

19 shouldn't have to have the death penalty, we should do

20 away with it. I don't think we should have the death

21 penalty because we're too advanced, we're too good,

22 now." Do you believe in that?

23 A. No.

24 Q. Why not?

25 A. There again, certain crimes I think it -- it

1 warrants the death penalty.

2 Q. In certain crimes and certain circumstances.

3 You understand the law says that certain crimes are

4 only eligible for the death penalty. It doesn't mean

5 they automatically get the death penalty. You still

6 have to decide whether it's death or life in prison.

7 For example, if you kill a kid under six

8 years old, you're eligible for the death penalty.

9 Does that means you automatically get it? No. If you

10 rob somebody and murder them, does that mean you

11 automatically get the death penalty? No. You have

12 two parts of the trial. The first part of the trial

13 is guilt or innocence. Did he do it or did he not do

14 it.

15 Remember, the trial you were on before,

16 the drug case? First of all, you had to decide

17 whether he's guilty or not, right?

18 A. Right.

19 Q. And then if he's found not guilty, the case

20 is over with, right?

21 A. Yes.

22 Q. But then if you find him guilty, you go on to

23 the second part of the trial. In the second part of

24 the trial, I think you-all sent the guy to jail or

25 something like that?

1 A. Yes.

2 Q. Okay. You understand how it's going to work

3 like that in some regards but some ways it's

4 different. In this case, the second part of the

5 trial, you might get to hear additional evidence. The

6 first part of the trial, the guilt or innocence, is

7 basically, you know, what happened that day, the --

8 the crime itself and maybe the surrounding

9 circumstances, but after that, if you find him guilty,

10 you might get to hear additional evidence.

11 You might hear about this guy, whether

12 he's a good character or bad character; has he been to

13 prison ten times, has he never been to prison before;

14 was he an Eagle Scout or has he always been in trouble

15 with the law? See what I'm saying? You want to hear

16 that other evidence before you make a decision, don't

17 you?

18 A. Yes.

19 Q. You wouldn't do anything automatically,

20 right, just because you found him guilty, you'd

21 automatically give him the death penalty, right?

22 A. Right.

23 Q. You'd have to wait till you hear everything

24 before you decide that. And it doesn't really matter

25 what he looks like or how old he is. As long as he's

1 over 18, you make a decision on the evidence, correct?

2 A. Yes.

3 Q. Now, the two questions that you asked -- that
4 are asked of you after, say, for example, the person's
5 found guilty, the Judge will give you these two
6 questions, and the first question says this, "Is there
7 a probability that the Defendant would commit criminal
8 acts of violence that will constitute a continuing
9 threat to society?" We call that "the future
10 dangerousness question." Basically, do you think he's
11 going to hurt somebody else in the future? Is there a
12 chance, a good chance, a probability, that the
13 Defendant would commit criminal acts of violence that
14 will constitute a continuing threat to society?

15 In other words, is there a good chance,
16 probability, that he's going to commit a criminal act
17 of violence. Doesn't necessarily mean he's going to
18 murder somebody, again, but would he hurt somebody,
19 again, is there a chance he could hurt somebody? And
20 that's all it is, a chance. And would that constitute
21 a continuing threat to society? And that makes sense,
22 right? You -- you want to do something to people who
23 are going to -- you think are going to hurt somebody
24 in the future.

25 Some people tell me, "Well, gosh, Mark,

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1 why don't you just take him out of society? Why don't
2 you put him in prison for life, that way he won't hurt
3 anybody because he's been in prison?" And I always
4 tell them, "Well, just because you're in prison
5 doesn't mean you're completely removed from society,"
6 because what else -- who else is in prison? Who else
7 is --

8 A. Prisoners.

9 Q. Prisoners. Other prisoners.

10 A. And guards.

11 Q. Guards, people like that. Have you ever
12 heard about happening -- that happening, where an
13 inmate hurts another inmate or kills another inmate,
14 or somebody attacks a guard or hurts a guard? You've
15 heard of that, right?

16 A. Yes, sir.

17 Q. So just because you're put in prison, does
18 that mean you're away from society and you can't hurt
19 anybody? No.

20 A. No.

21 Q. It's kind of a trick question because some
22 people think, "Well, you're -- you're locked up and
23 you never come in contact with anybody, again." Well,
24 that's not necessarily true. I mean, if you were sent
25 out on a desert island, there's no one -- no other

1 human beings out there that might be true, but that's
2 not what we have.

3 So the first question is, based on the
4 evidence that you've heard, which is the first part of
5 the trial and any other background, you think he's
6 going to hurt somebody in the future. Then you go to
7 the second -- you answer this question yes or no.

8 Then you go to the second question. The
9 second question says this, it talks about mitigating
10 circumstances, and that's a big word that I had never
11 even heard of before I went to law school, but
12 mitigating basically means anything that would lessen
13 or make less severe the punishment. In other words,
14 he did the crime, but is there any reason we should
15 give him a life sentence rather than a death sentence
16 impose, or is there any way to cut him a break, give
17 him a lesser sentence? Because that's what mitigating
18 means, lessen or make less severe the punishment.

19 So, in a regular case, say you find him
20 guilty of capital murder, he's guilty, and you answer
21 this question yes, I think he's a -- yes, I think he's
22 a continuing threat to society, the Judge says before
23 you give the death penalty, you have to answer this
24 question, "Take into consideration all of the
25 evidence, including the circumstances of the offense,"

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1 you know, like what happened that day, "the
2 Defendant's character and his background," you know,
3 his past, "and his personal moral culpability, is
4 there sufficient," is there enough, "mitigating
5 circumstance or circumstances to warrant that a
6 sentence a life, rather than the death sentence?" I
7 mean, he's heading toward the death penalty, but the
8 Judge says, check it and see if you're sure that there
9 -- is there anything that's enough to show that he
10 should get a life sentence instead of a death
11 sentence?

12 Let me give you an example. Do you have
13 kids, by any chance?

14 A. Yes, I do.

15 Q. Do you make decisions on how to punish your
16 kids sometimes if they violate a house rule or
17 something like that?

18 A. Yes.

19 Q. I'm sure your kids are wonderful kids but I'm
20 going to give you an example about kids. Say a
21 household has two kids. Kid No. 1, the curfew of the
22 house is 11:00 at night. You're supposed to be home
23 at 11:00 at night. The first kid comes home at 11:03.
24 You find out he's violated -- he broke the curfew,
25 right? It's 11:03. You ask him what happened. You

1 find out he's had a flat tire. And he would have been
 2 home at 10:45, but he had to change the tire, so he
 3 got home after 11. And this kid has never broken
 4 curfew before. This is the first time he's ever
 5 gotten home too late and those were the reasons why.
 6 Now, you go on the second kid, and we'll
 7 just call this "the bad kid" because this kid, he
 8 doesn't come home just a little after 11, he comes
 9 home at 3:00 in the morning, smelling of alcohol. And
 10 you say, "What's been going on with you?" "Oh, I was
 11 at a party and I forgot to come home. I just didn't
 12 make it home by 11:00. I was just having -- partying
 13 and fun." And then this is the kid who -- this isn't
 14 the first time he's broken curfew, he's broken it five
 15 times before.

16 Okay, so you have two kids. They both
 17 broke curfew. Would you treat them both equally the
 18 same?

19 A. No.

20 Q. Probably not. What would you do? Generally
 21 speaking, you'd probably give the guy who's committed
 22 the -- who's done this before, you know, violated
 23 probation -- violated curfew before a harsher
 24 punishment than you did -- would you do the first one,
 25 right?

1 Just because you hear a mitigating
 2 circumstance, like, "Oh, he was young or he was a good
 3 student in school, or he was an Eagle Scout," does
 4 that mean you automatically reduce his sentence? No.
 5 You balance it against everything else and decide is
 6 that enough to give him a lower sentence. Maybe it
 7 is, maybe it isn't. Just like the two kids. You got
 8 to wait till you hear -- know what all their
 9 background is before you make a decision.

10 Now, one thing the Judge says, too, will
 11 probably give you an instruction that says, "Voluntary
 12 intoxication is not a defense to crime." If you
 13 voluntarily get yourself drunk or high on drugs and
 14 you go commit a crime, is that an excuse to the crime?
 15 No, absolutely not. You can't just say, "Well, I
 16 robbed a bank, but I was drunk, so I'm not guilty of
 17 robbing a bank." No, it's not a defense to crime.

18 However, it could possibly be a
 19 mitigating circumstance. But that's up to you. One
 20 jury (sic) may say, "Oh, gosh, you know, he was just
 21 drunk when he did it, so we'll cut him a break and
 22 give him a less sentence." Other jurors may say,
 23 "Look, I don't care if he was drunk or not. He still
 24 did this crime, and, you know, this background." You
 25 see what I'm saying?

1 A. Yes.
 2 Q. Because the first one's his first time. He
 3 just barely missed it, and he had a pretty good
 4 reason, there was "extenuating circumstances" to why
 5 he was late for curfew. But the second one, well,
 6 gosh, it's night and day, right?
 7 And that's what this question is designed
 8 to do. Just because he's found guilty of capital
 9 murder, is there any reason that you should give him a
 10 lesser punishment? There may or may not be. Is there
 11 enough or not?

12 And what is a mitigating circumstance?
 13 That's up to the jury to decide. Some jurors may say,
 14 "Well, look, you know, I don't care he came from a
 15 broke home, or he was a straight A student or he used
 16 to be in Boy Scouts. That's not enough to go to a
 17 lower sentence. Other -- he's got to pay for what he
 18 did." See what I'm saying? It's kind of like a
 19 balancing test. You got to decide should he get the
 20 death penalty or is there a sufficient reason to give
 21 him something less, like these -- I call them
 22 "Extenuating circumstances" or mitigating
 23 circumstances, you know? And that's something that
 24 you have to decide, as a jury, what effect, if any, to
 25 give to him.

1 A. Yes.
 2 Q. You -- the jury gives the weight to it, what
 3 they want to give it, okay? Just because you hear it
 4 doesn't mean that automatically it goes lower.

5 So that's how it works. The scheme is,
 6 you first decide whether he's guilty or not, then you
 7 answer the question, "Is there a chance he's going to
 8 be a danger in the future, yes or no," and then you
 9 answer that one, "Is there any reason to lower the
 10 sentence to life, instead of death?" If you answer
 11 the first question yes, and the second question no, he
 12 gets the death sentence. You answer any other way, he
 13 can get a life sentence.

14 And, again, that's the person we're
 15 talking about. Can you look at him and tell me that
 16 you can listen to all that evidence and make that
 17 decision if the evidence calls for it?

18 A. Yes, I can.

19 Q. Thank you. Any questions about how that
 20 works?

21 A. No.

22 Q. It sounds like you want to be -- oh, you said
 23 something about you want to be convinced that there's
 24 enough evidence. Remember that?

25 A. Yes.

1 Q. We call that "the burden of proof," how much
2 you have to be convinced. And you said something
3 about, well, it has to be without a doubt. And I need
4 to hold you back a little bit on that one because the
5 Judge is not going to tell you without any doubt or
6 all doubt, or shadow of a doubt, but the Judge's
7 instruction will be the jury has to find him guilty
8 beyond a reasonable doubt. Beyond a reasonable doubt.

9 Now, unfortunately, that's not defined by
10 the law, but a lot of -- but I can tell you what it
11 doesn't mean. It doesn't mean beyond -- without a
12 doubt. It doesn't mean without a doubt. It doesn't
13 mean beyond a shadow of a doubt or any doubt. Let me
14 give you an example. Say, for example, you're a juror
15 in a bank robbery case and you're sitting there in the
16 jury and the first teller comes up and says, "There's
17 the guy that robbed me. I recognize his face. He
18 came up and he demanded money with a gun. And I
19 recognize him. He was wearing a yellow shirt that the
20 day."

21 The second teller comes up and says,
22 "That's the guy who robbed our bank that day. I saw
23 him rob the other teller. He put a gun in her face
24 and took a bag of money. That's the guy who robbed
25 him -- robbed her, and he was wearing a yellow shirt

1 is brought against him. That means the State still
2 has to prove the case, correct?

3 A. Correct.

4 Q. And as he sits there now, he's presumed
5 innocent because we've not brought any evidence
6 against him. That doesn't mean he is innocent, it
7 just means he's presumed at this time. Why? You
8 haven't heard any evidence yet, okay? But you've got
9 to start him off at innocent. It's not like other
10 countries where sometimes you're guilty and you have
11 to prove you're innocent. This is America. You're
12 presumed innocent and the State has to prove him
13 guilty. And we have to do that in every case, every
14 criminal case that we bring.

15 You know about the Fifth Amendment, that
16 the guy can testify if he wants to, but if he doesn't
17 have -- want to he doesn't have to, right?

18 A. Yes.

19 Q. And you have can't hold that against him,
20 right?

21 A. Right.

22 Q. Sometimes jurors say, "Well, gosh, Mark, I
23 want to hear what he has to say. I can't make a
24 decision unless he testifies." And I always have to
25 tell them, "Wait a minute, if the Judge tells you he

1 that day."

2 Then the next -- third witness comes up
3 and he's a bank guard who tried to catch the guy
4 outside the bank right after it happened. He says,
5 "There's the guy that was robbing the bank. I
6 recognize his face. He was walking out of the bank
7 with a bag of money in one hand and a gun in the other
8 and that day he was wearing an orange shirt."

9 Well, you got a little discrepancy,
10 right? You got two people saying yellow shirt and one
11 saying orange shirt. But do you really have a doubt
12 that this guy robbed the bank? Because all of them
13 recognized his face and saw him, what he was doing,
14 but you might have something that's -- that's a little
15 different, inconsistency in the testimony. Does that
16 -- was that enough to say that you don't believe it
17 beyond a reasonable doubt? Probably not, because --
18 you see what I'm trying to say is? I can't prove it
19 to you 100 percent. There's no way you could do that,
20 and the law doesn't require me to do. It just says,
21 "Beyond a reasonable doubt."

22 Can you follow that instruction?

23 A. Yes.

24 Q. Okay. You know, just because he's indicted
25 does not mean he's guilty. That just means the charge

1 doesn't testify, you can't hold that against him, you
2 got to follow that law," would you be able to do that?

3 A. Yes.

4 Q. Thank you. I think you pointed out you're
5 not sure what your church's position is against the
6 death -- for or against the penalty; is that correct?

7 A. Uh...

8 Q. Do you know what your church's position is?

9 A. No.

10 Q. Okay. Generally speaking, the Catholic
11 Church is against the death penalty, generally
12 speaking. Is that going to have an effect on you in
13 this case?

14 A. No.

15 Q. Why not?

16 A. I think that the death penalty is a -- or
17 could be a deterrence on certain -- certain crimes.

18 Q. See what I'm getting at? Some people say,
19 "Well, you know, I'm a Catholic and the Catholic says
20 I can't do this, and so, because of my religious
21 beliefs, I can't sit on a death penalty case." Other
22 people who are Catholics say, "Look, you know, I
23 believe in the Catholic Church's teachings, but in
24 this one thing, I go my own way, I make up my own mind
25 about something." Is that kind of how you fit in?

1 A. Yes.

2 Q. Okay. In other words, you're not going to

3 lose any sleep if you go back and the priest says, you

4 know, the Catholic Church is against the death

5 penalty. You're still going to make up your own mind?

6 A. Yes.

7 Q. And it doesn't matter how you feel. We just

8 want to know what -- how it is.

9 Now, you understand, too, that police

10 officers may testify in this case. Police officers

11 may testify in this case and they're to be treated

12 just like any other officer -- any other witness, I'm

13 sorry. Just because a police officer testifies in

14 uniform, he's a policeman, does that mean his

15 testimony is better than everybody else's? No. He's

16 supposed to be treated just the say. Can you do that?

17 A. Yes.

18 Q. Okay. Do you have any other questions of us,

19 Mr. Benavidez?

20 A. No, I don't.

21 Q. Do you work at the Celanese plant in Bishop,

22 then?

23 A. Yes, I do.

24 Q. And how long have you been over there?

25 A. 24 years.

1 Q. They've been having a lot of layoffs. You've

2 been keeping your head above water there, huh?

3 A. So far, yes.

4 Q. Well, keep it up, man, because I know that's

5 been tough. I know some people that got laid off.

6 That's a big plant, but they -- every once in a while

7 they seem to kind of go through all this stuff. And

8 you're an operator out there?

9 A. I'm a operation specialist.

10 Q. What do you do?

11 A. Basically, a unit supervisor. I oversee the

12 day-to-day operations of four chemical units. So I

13 have 15 operators under me.

14 Q. Okay. So you're not just an operator, you're

15 a supervisor of the operators.

16 A. Yes.

17 Q. So you pretty much make big decisions. --

18 A. Yes.

19 Q. -- a lot, and everything, and that --

20 A. Get calls at 2 in the morning.

21 Q. Say again?

22 A. I said, I get the calls at 2 in the morning.

23 Q. Sometimes being a supervisor isn't that much

24 fun, but what I'm saying is, you know how to make

25 decisions and sometimes probably tough decisions.

1 A. Yes, I believe so.

2 Q. In this case, although we don't think anybody

3 likes making the decision, you understand your civic

4 duty in this case.

5 A. Yes.

6 MR. SKURKA: Okay. Thank you, Mr.

7 Benavidez. I'll let the other lawyers talk to you

8 now.

9 THE COURT: All right.

10 VOIR DIRE EXAMINATION

11 BY MR. GARZA:

12 Q. Mr. Benavidez, thank you for being here, sir.

13 And my name is Ed Garza, I -- I think I introduced

14 myself to all of you-all when we had the big panel

15 downstairs. This is Mr. Grant Jones. He's my

16 Co-Counsel in this matter. And, of course, this is

17 our client that we represent, Mr. John Henry Ramirez.

18 We're trying -- we're trying to ask these

19 questions that we're asking you to get a feel for

20 whether or not you can truthfully and honestly

21 participate in this kind of a case as a juror. You've

22 already made references to the fact that when you

23 first came and found out that this was a capital

24 murder case wherein the State was asking for the death

25 penalty, it struck you as something, obviously, very,

1 very awesome, very important.

2 A. Yes.

3 Q. You still feel that way?

4 A. I still -- yes.

5 Q. Is it something that would obviously invoke

6 some serious thought in trying to assist us, if you

7 were chosen as a juror, in -- in coming to a decision

8 on all these legal issues? Would you -- I'm sure you

9 would, it's kind of a dumb question, but I'm sure you

10 can assure us that you would do your best to -- to

11 take this very seriously.

12 A. Yes.

13 Q. It's important for everybody concerned

14 because the stakes are so high. Would you agree?

15 A. I agree.

16 Q. The State of Texas is going to try to prove

17 this case, if they can, beyond a reasonable doubt.

18 And if and when they do or don't, you know, a lot of

19 things could -- could happen. If they don't, of

20 course, we get to go home. If they do, then, you

21 know, we have to proceed to this other segment of the

22 trial because there's always two parts to a criminal

23 trial in Texas. And we use this big highfalutin word

24 called, "bifurcation," meaning there's a

25 guilt/innocence part and then there's a punishment

1 part, okay?
 2 And in Texas, we also enjoy the
 3 opportunity, if we wish to invoke it, to have the
 4 Judge assess punishment in certain cases, okay? In
 5 this one, you can't. By law, you guys are the ones
 6 that have to make all the serious decisions, but based
 7 on that decision, then you give the authority to the
 8 Judge on what particular punishment he's going to
 9 assess, depending on your verdict, okay.

10 So you-all have a great deal of power in
 11 this situation. And I guess as a benefit, we get to
 12 use 12 people who can either put their minds together
 13 or not, you know, depending on how -- how they see
 14 things, okay?

15 But it's real important for us to know
 16 that you're open-minded, fair, and that you can give
 17 everybody involved an even chance.

18 A. Yes.

19 Q. Are you that kind of person?

20 A. I believe I'm that kind of person.

21 Q. I guess it would be like placing yourself in
 22 this situation. If you were, you know, on the
 23 receiving end of the Criminal Justice System, if you
 24 have been accused of a crime or something, I'm sure
 25 you would want and would require and would want to

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1 avail yourself of the same system.

2 A. Yes.

3 Q. Would you not?

4 A. I would, surely would.

5 Q. Yeah. And then, of course, what if it
 6 involved one of your family members, one of your
 7 children or somebody like that? It -- it makes it hit
 8 closer to home and it makes you probably appreciate
 9 our system a little bit more and that we have these
 10 safeguards out there, okay? And we're not saying it's
 11 always perfect because I'm sure you've seen or read
 12 where some people have been accused of crime, tried,
 13 convicted, and then they serve this enormous amount of
 14 years in jail and then they come up factually innocent
 15 through DNA processes and things of that nature. How
 16 do you have feel about that?

17 A. Yeah, that's -- that's tough. Getting
 18 convicted and knowing that you're innocent, and
 19 spending time in jail, and coming back years later,
 20 find out that you were right, you were innocent and
 21 they -- they convicted you anyway.

22 Q. And they've taken all those years out of your
 23 life and exposed you to a whole, you know, horrible
 24 kind of culture, probably, which, you know, would be
 25 unimaginable to some of us who have never been there

1 and don't want to, and then to try to come back and
 2 make a life.
 3 So I guess what I'm trying to stress to
 4 you is, it's important that we know, from our
 5 questions to you, that you can assist us in this
 6 matter and see if we can try to get it right the first
 7 time.

8 A. Yes, I can.

9 Q. That's pretty important, don't you think?

10 A. I -- yes, very important.

11 Q. A big responsibility?

12 A. Yes.

13 Q. Is it one that you would take pretty
 14 seriously? I think you would.

15 A. I would take it very seriously, yes.

16 Q. Okay. Is there anything going on at all in
 17 your life right now, as far as vacation plans or
 18 anything at work or anything that would distract you
 19 in any way or keep you from giving every thought,
 20 every consideration that would be required -- every
 21 duty that would be required of you in this case?

22 A. No.

23 Q. Okay. Could you serve as a juror in this
 24 case?

25 A. What do you mean? I mean...

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1 Q. Well, is there any way you couldn't serve as
 2 a juror in this case, like if you couldn't take the
 3 oath that the Judge asked you about, --

4 A. Oh, no. There's --

5 Q. -- if there's anything here about the
 6 mitigating evidence that you can't consider, any
 7 aggravating evidence that you couldn't consider? You
 8 know, anything at all that would preclude you from
 9 being fair and impartial in this case?

10 A. No.

11 Q. I noticed in your questionnaire you were
 12 asked that, "On a scale of one to ten, how strongly do
 13 you believe in the death penalty, one being the least,
 14 ten being the strongest," and you circled five, which
 15 is pretty much right down the middle. Is that the way
 16 you feel about it?

17 A. Yes. I believe in it, but I don't believe
 18 ever crime warrants the death penalty.

19 Q. Okay. You also indicated on the question of,
 20 "Do you believe that the death penalty is imposed too
 21 often, not often enough or about right," you
 22 indicated, "about right."

23 A. Yes.

24 Q. Is that what you believe?

25 A. Yes.

1 Q. Okay. And also, when you were asked, "Do you
2 think serving a life sentence in prison is more
3 severe, about the same or less severe than the death
4 penalty," you also put, "It's probably about the
5 same."

6 A. Yes.

7 Q. It kind of reminds me of the joke, which I
8 can't remember about when the guy goes in to the
9 doctor about a condition, and, you know, the doctor
10 comes up and tells him that he's got cancer and
11 Alzheimer's, both. He says "You've got -- you've got
12 big problems. You've got both cancer and
13 Alzheimer's," and that's kind of -- that's the kind of
14 situation this could possibly lead up to. It wouldn't
15 be a -- you know, it's either a life or death
16 sentence, depending on whether or not the government
17 proves its case, okay.

18 And so would it be fair to say that you
19 would you try to treat your decision on a possible
20 punishment fairly and evenly?

21 A. Yes.

22 MR. GARZA: Okay.

23 THE COURT: Is that it, Mr. Garza?

24 MR. GARZA: I think so, Judge.

25 THE COURT: All right.

1 you some instructions, ones I've already given you,
2 but I don't want you to watch the local news or read
3 the local paper while this -- between now and December
4 1, okay.

5 We're going to be going to trial, I
6 believe, the first week of December. I don't know if
7 it's going to spill into the second week or not, but
8 you might -- you might want to plan for, at the most,
9 those two weeks, first two weeks of December. And
10 don't talk about the facts of the case with anybody,
11 okay?

12 VENIREPERSON NO. 34: Okay.

13 THE COURT: So we'll be keeping in touch.
14 We'll let you know if things change, okay?

15 VENIREPERSON NO. 34: Okay.

16 THE COURT: All right. If you need a
17 work excuse, the bailiff will get you one.

18 VENIREPERSON NO. 34: All right.

19 THE COURT: Thank you very much, Mr.
20 Benavidez.

21 VENIREPERSON NO. 34: Thank you, sir.
22 (Venireperson exits courtroom.)

23 THE COURT: Okay. That's Juror No. 4.

24 All right. We've got one more person.

25 All right, bring him in.

1 MR. GARZA: Thank you. I appreciate your
2 answers.

3 THE COURT: All right.

4 MR. SKURKA: Thank you, Mr. Benavidez.

5 THE COURT: Mr. Benavidez, will you wait
6 in the jury room while I speak to the attorneys for
7 just a second.

8 (Venireperson exits courtroom.)

9 THE COURT: All right.

10 MR. SKURKA: State will accept this
11 juror.

12 THE COURT: Mr. Garza?

13 MR. GARZA: Judge, can we confer just a
14 second, Judge?

15 THE COURT: You may, you may.

16 MR. GARZA: Thank you.

17 (Pause in proceedings).

18 MR. GARZA: We'll also accept him, Your
19 Honor.

20 THE COURT: All right, let's bring him
21 in.

22 (Venireperson enters courtroom.)

23 THE COURT: All right. Hello, again,

24 Mr. Benavidez. All right, Mr. Benavidez, you have
25 been selected to be on this jury so I'm going to give

1 (Venireperson enters courtroom.)

2 THE COURT: All right. Come on in, Ms.
3 Meza. Go ahead and have a seat.

4 VENIREPERSON NO. 35: Yes, sir.

5
6 VENIREPERSON NO. 35,
7 THERESA MEZA,
8 VOIR DIRE EXAMINATION

9 BY THE COURT:

10 Q. All right. How are you today?

11 A. Just fine.

12 Q. All right. You are Theresa Meza; is that
13 correct?

14 A. Yes, sir.

15 Q. All right. And we're going to talk to you
16 about some stuff, okay?

17 A. Okay.

18 Q. First of all, we're looking to pick a jury
19 here, okay, you know that.

20 A. Yes.

21 Q. And we're looking for people that can keep an
22 open mind and follow the law, okay?

23 A. Okay.

24 Q. So let's begin with the open mind. Is there
25 anything that would keep you from keeping an open mind

1 in this case?
 2 A. I don't think so, sir.
 3 Q. Okay. I know that you -- that you said that
 4 you got some information from the media.
 5 A. But it's been so long, I don't -- I don't
 6 think I can remember what it was, sir.
 7 Q. Okay. So you have very little knowledge --
 8 A. Yes.
 9 Q. -- about it.
 10 A. Yes.
 11 Q. Now, you also must know, and I got to tell
 12 you, I'm sure that all the lawyers in here agree with
 13 me, you know, when the media reports something, they
 14 don't always get it right.
 15 A. That's true.
 16 Q. Okay? And a lot of times we're doing these
 17 cases, and they'll report something and it will just
 18 be completely wrong, okay?
 19 A. Yes.
 20 Q. But my point is this, we want you just to
 21 come to court, and if you are selected on this jury
 22 just consider the evidence that's presented to you
 23 here and not what you've heard in the media.
 24 A. Okay.
 25 Q. You can do that?

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1 A. Yes, sir.
 2 Q. Okay. Now, let's move on to the next thing,
 3 that is, following the law. I want to talk to you
 4 about a few things. And it looks like you have been
 5 on a criminal jury before, but it's been a while.
 6 A. It's been maybe 20 --
 7 Q. That's all right.
 8 A. -- or more years.
 9 Q. That's okay. I think we've already seated
 10 some people on this jury that have never been on a
 11 jury before, okay? So that doesn't matter. What I
 12 will tell you is this, I'm going to talk to you about
 13 some things and maybe your prior jury service may
 14 help.
 15 Now, first of all, in every criminal case
 16 in the State of Texas, and you may remember this from
 17 your prior jury service, or from just knowledge, just
 18 personal knowledge, the State's got the burden to
 19 prove the case.
 20 A. Yes, sir.
 21 Q. Okay? The Defendant doesn't have to come in
 22 here and prove his innocence.
 23 A. Yes, sir. I know that.
 24 Q. All right. There are places in the world
 25 where it's that way and we're glad it's not, okay?

1 A. Yes, sir.
 2 Q. I'm sure you would agree with me on that.
 3 A. Yes.
 4 Q. The next thing is the burden of proof is
 5 beyond a reasonable doubt.
 6 A. Okay.
 7 Q. That's the burden. And I -- and if you sat
 8 on a criminal case, that was the burden of proof that
 9 you had back then. You may or may not remember that.
 10 A. It's been a long time.
 11 Q. Okay. But, in any event, that's the burden
 12 of proof, and that's the burden of proof in all
 13 criminal cases, not just this case, not just the
 14 capital case. We had a fellow in here earlier that
 15 had been on a jury, and -- and the -- it was a public
 16 intoxication but the burden of proof was still beyond
 17 a reasonable doubt.
 18 A. Yes, sir.
 19 Q. Okay? And that's a high standard. It's the
 20 highest standard that we have in all of the law. Now,
 21 what it is not is it is not beyond all doubt, it's not
 22 beyond a shadow of a doubt, it's beyond a reasonable
 23 doubt, okay?
 24 A. Okay.
 25 Q. And what I need to know is could you follow

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1 that instruction that -- and require the State to
 2 prove this case beyond a reasonable doubt?
 3 A. Yes, sir.
 4 Q. Okay. Now, because it's the burden of proof,
 5 it is on the State, our law says that, "Look, State,
 6 you bring the charges, that's fine. Until you prove
 7 it, Defendant is presumed to be innocent. You may not
 8 be able to prove it, but until you --" and that's
 9 really all of our rights, right?
 10 A. Yes, sir.
 11 Q. Until -- if the State brings a charge against
 12 us, you know, until they prove it, we're innocent
 13 until proven guilty.
 14 A. That's true.
 15 Q. Okay? You believe in that.
 16 A. Yes, sir.
 17 Q. Okay. And you could follow that law.
 18 A. Yes, sir.
 19 Q. Okay. Now, as part of all of that, going
 20 along with all of that, Defense doesn't have to do
 21 anything. They don't have to present a case. Because
 22 why? Because the burden's not on them.
 23 A. Yes, sir.
 24 Q. It's on the State, right? As part of that,
 25 the Defendant doesn't have to testify.

1 A. That's true.

2 Q. Okay? And -- and the Constitution says he

3 doesn't have to testify. And more than he doesn't

4 have to testify, the jury can't hold it against him.

5 The law says you can't -- you can't go back to the

6 jury room to deliberate and say, "You know what?

7 Mr. Skurka's case, kind of shaky, but, you know what,

8 he didn't testify, so I'm going to -- I'm going to put

9 that over here in Mr. Skurka's, you know, side."

10 A. Uh-huh.

11 Q. You can't do that. You can't --

12 A. Yeah.

13 Q. -- you can't hold it against him. Would you

14 do that?

15 A. I can do that, sir.

16 Q. Okay. You -- you could -- you could follow

17 the law that says you would not hold it against the

18 Defendant if he chose not to testify.

19 A. I wouldn't hold it against him. He has the

20 right to say yes or no to testify.

21 Q. Yes. And, you know, I tell the jury, there's

22 lots of reasons why a person wouldn't want to testify.

23 Maybe -- maybe his lawyers advise him not to because

24 he -- they think that the State hasn't proven their

25 case, okay? There's lots of reasons. Or maybe he's

1 elements and that the Defendant's guilty, okay, of

2 what they've charged them with.

3 A. Yes, sir.

4 Q. All right. If the Defendant is acquitted,

5 that is, the State can't prove their case, we go home.

6 A. All right.

7 Q. Case is over. If not, then we go to the

8 second part, which is the punishment part, okay? And

9 I -- what kind of case were you on before, if you even

10 recall.

11 A. I think was called -- the only thing I

12 remember, it was called a bandit, a car bandit, or

13 something like that. I really don't remember. It's

14 been too long.

15 Q. Could be somebody had stolen a car?

16 A. They stole a car, but I think there was other

17 --

18 Q. Okay.

19 A. -- charges against him, too --

20 Q. Okay.

21 A. -- when stealing the car.

22 Q. Okay. Well, in any event --

23 A. No, he, wasn't stealing the car, he was --

24 hit the bumper in back, run into him, --

25 Q. Uh-huh.

1 uneducated, maybe he gets nervous, maybe he stutters.

2 A. Yeah, I can -- I can understand that.

3 Q. You can understand that, right?

4 A. Yeah.

5 Q. And, obviously, this is a --

6 A. I'm a little nervous right now.

7 Q. And you're not on trial.

8 A. Yeah.

9 Q. So -- okay. So you wouldn't do that, all

10 right. Now, let's talk a little bit about in case,

11 this type of case. You may or may not remember, did

12 you -- were you asked to assess punishment in that

13 case where you were on the jury?

14 A. Yes, sir.

15 Q. Okay. So then you know that we have two

16 parts of a --

17 A. I think so. I don't -- I can't really

18 remember. I think we did.

19 Q. You think you did? Okay. Well, then, you

20 know you have two parts of a trial.

21 A. Yeah.

22 Q. We call it "bifurcated," but there's two

23 parts to a trial, okay? Guilt or innocence phase,

24 that is, the State tries to prove, you know, they

25 brought a charge, they try to prove that -- all their

1 A. -- and then I think he would try to steal --

2 or rob them, but I think there was other charges. I

3 can't remember. I think that's about --

4 Q. Well, in any event --

5 A. -- about as best I can remember.

6 Q. That's fine. In any event, most of the time

7 in criminal cases when we get to the second part of

8 trial, there's a -- there's a -- the legislature has

9 set a punishment range.

10 A. Uh-huh.

11 Q. Okay? Maybe -- maybe it's 6 months to 2

12 years in jail, state jail, or maybe it's 2 years to 10

13 years in prison, or 5 years to 99 in prison. And then

14 the jury decides, you know, okay, well, they talk

15 about it and they decide on what to give the

16 Defendant.

17 A. Yes, sir.

18 Q. Okay? Capital murder's a little different,

19 okay, which is what this is, okay?

20 A. Okay.

21 Q. If we get to the second half of the -- of the

22 trial, you're asked to answer questions, okay?

23 A. Okay.

24 Q. All right. And here are the questions.

25 Here's Question No. 1, "Is there a probability that

1 the Defendant would commit criminal acts of violence
2 that would constitute a continuing threat to society?"

3 And the jury would answer yes or no to that, okay?

4 A. Okay.

5 Q. Then up there, you see Special Issue No. 2,
6 with the -- the -- up there?

7 A. Yeah, this one right here?

8 Q. Yeah. "After taking into consideration all
9 of the evidence, including the circumstances of the
10 offense," which, of course, is the first part of the
11 case, the guilt or innocence part, --

12 A. Uh-huh.

13 Q. "-- the Defendant's character and background
14 and the person's -- and the personal moral culpability
15 of the Defendant, is there sufficient mitigating
16 circumstance or circumstances to warrant a sentence of
17 life in prison, rather than a death sentence be
18 imposed?" Okay?

19 A. Okay.

20 Q. And the jury would answer that yes or no.

21 A. Yes, sir.

22 Q. Okay? And, basically, what are we talking
23 about here? Well, we're -- you know, you may hear
24 other stuff about the Defendant. Maybe -- maybe he
25 had a bad childhood, maybe he had a good childhood;

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1 maybe he had a bad criminal history, maybe he -- this
2 is the first time he's ever been in trouble. And the
3 jury would decide, you know, --

4 A. Life or --

5 Q. -- life -- basically, is there a reason to
6 give him life because there's mitigating circumstances
7 --

8 A. Uh-huh.

9 Q. -- which means circumstances that lessen, or
10 aggravating circumstances, which are circumstances
11 that make the situation worse. You follow me?

12 A. Yes, sir.

13 Q. Okay. So you -- basically, you'd have to
14 consider basically his whole life.

15 A. Yes, sir.

16 Q. Okay? And then -- and then answer that
17 question.

18 A. Okay.

19 Q. Okay? All right. Now, at the end of this
20 trial, I'm going to -- well, not the end -- at the end
21 of this jury selection, I'm going to swear in the
22 jury. They're going to raise their right hands --

23 A. Okay.

24 Q. -- and you may remember this from your
25 previous service.

1 A. Yes, sir.

2 Q. And -- and the -- and the oath is this, "Will
3 you render a true verdict based upon the law and the
4 evidence presented to you?"

5 A. Yes, sir.

6 Q. Okay? And then the jury will say yes and
7 we'll begin the trial. All right?

8 A. Okay.

9 Q. I need to know from you if you can take that
10 oath, okay? And -- and that is, first, can you render
11 a true verdict on the guilt or innocence phase based
12 upon the law and evidence presented to you? Is that
13 yes or no?

14 A. Yes.

15 Q. Okay. And then on these -- can you answer
16 these questions truthfully, these two special issues?
17 And before you answer, some people tell me, "You know,
18 Judge, I can't do it, because -- I can't answer these
19 questions because I can't participate in the process
20 that could lead to someone's death, so I can't answer
21 these questions."

22 A. I think I could.

23 Q. You think you could?

24 A. Yes.

25 Q. Okay. Well, let me ask you this, would you

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1 -- would you answer Special Issue No. 2 and take into
2 consideration everything, rather than -- some people
3 say, "Well, you know what? I would -- you know what,
4 forget Special Issue No. 2. If he gets convicted of
5 capital murder, I'm going to always -- there's --
6 there's no considering mitigating -- I'm always going
7 to recommend the death penalty."

8 A. No.

9 Q. You could consider everything.

10 A. Life in prison or death, depends on what --

11 Q. Okay. You could -- you could weigh all of
12 the facts that are presented to you.

13 A. Yes, sir.

14 Q. And answer that question truthfully.

15 A. Yes.

16 Q. Okay. Let me talk to you a little bit about
17 the charge, capital murder. What is it, okay? I like
18 to call it murder plus, all right?

19 A. Okay.

20 Q. It's murder, which, of course, is the
21 intentional taking of someone else's life, but it's
22 more than that. The legislature says only certain
23 types of murders are capitals, that is, what is
24 capital, meaning the death penalty is a possibility,
25 okay?

1 A. Okay.

2 Q. In this case, what they're saying is, that is

3 the State, that we've got a murder while in the course

4 of committing or attempting to commit a robbery, okay?

5 So you got the murder, and then they have to prove

6 together with the robbery or attempting to commit the

7 robbery, murder plus.

8 A. Okay.

9 Q. For the State to prevail, they have to prove

10 all of their elements of capital murder, okay?

11 A. Okay.

12 Q. In other words, they don't just get to get

13 seven out of eight elements, or eight out of nine,

14 whatever it is, they got to get them all.

15 A. Yes, sir.

16 Q. And would you hold them to that burden before

17 you found anyone guilty of capital murder?

18 A. Yes, sir.

19 THE COURT: Okay. All right. Well, I'm

20 going to turn the floor over to Mr. Skurka.

21 VOIR DIRE EXAMINATION

22 BY MR. SKURKA:

23 Q. Hello, Ms. Meza, how are you today?

24 A. Just fine, sir.

25 Q. I know it's getting late in the day, so we're

1 going to kind of go through this, and just bear with

2 us because it's --

3 A. I -- I have no limit time.

4 Q. Okay. You don't have to rub it in that

5 you're retired and we all work hard.

6 A. Well, I put in my years.

7 Q. I know you did.

8 THE COURT: She put in her time.

9 Q. (BY MR. SKURKA) Where did you work before you

10 retired?

11 A. Corpus Christi Army Depot.

12 Q. The whole 33 years --

13 A. Yes, sir.

14 Q. -- and 2 months?

15 A. Yes, sir.

16 Q. I noticed you put 33 years and 2 months.

17 A. Yeah. And --

18 Q. And how many hours and how many days?

19 A. I didn't count the hours.

20 Q. Well, I know somebody -- sometimes they'll

21 put 33 years, 2 months, 3 days and 2 hours, whatever.

22 Okay, so what do you do with your time now that you're

23 retired?

24 A. Whatever I feel like doing. I cook, knit,

25 crochet, read, watch T.V., do errands, take a trip

1 here and there.

2 Q. So you sound like you keep yourself busy --

3 A. Yes, sir.

4 Q. -- with things you enjoy.

5 A. Plus, I feed my cats and dogs.

6 Q. Well, that's good. And I know you're just

7 rubbing in that you're retired and you have the

8 ability to do all that stuff and we still have to

9 work.

10 I want to talk to you about a few things

11 today now, and there's no right or wrong answers to

12 anything you say, --

13 A. Okay.

14 Q. -- I just want to know how you feel, because

15 we're trying to see if you qualify as a juror in this

16 case.

17 A. Okay.

18 Q. So I don't want you to answer in such a way

19 that you think the Judge wants to hear it or I want to

20 hear it --

21 A. Oh, no, it's --

22 Q. -- or the Defense lawyer.

23 A. -- how I feel.

24 Q. You just tell us how you feel, perfect. The

25 first question I want to ask you about is the death

1 penalty. Tell me, in general, how you feel about the

2 death penalty.

3 A. I believe in it.

4 Q. Why?

5 A. If a person has killed somebody, they should

6 pay for it.

7 Q. Did you understand what the Judge said, just

8 because you kill somebody --

9 A. It doesn't mean that he could --

10 Q. Plain murder.

11 A. Yeah.

12 Q. It just means it has to be a special kind of

13 murder.

14 A. Yes, sir.

15 Q. In other words, the legislature has -- you

16 know, there's different ways to kill people, but the

17 only way you can face the death penalty is if it's

18 under certain circumstances.

19 A. Yes, sir.

20 Q. You understand that?

21 A. Yeah, that if he did something else before he

22 killed somebody or in the process of doing it.

23 Q. There you go. It's usually at the same time

24 --

25 A. Yeah.

1 Q. -- or, you know, killing a kid under six,
 2 killing a policeman on duty, killing somebody while
 3 you're robbing, raping, burglarizing them, --
 4 A. Yes, sir.
 5 Q. -- kidnapping them and everything. How do
 6 you feel about you being part of the process, though?
 7 A. I guess I feel good about it.
 8 Q. Okay. So you think that's part of a jury
 9 that you would want to be on or -- or not enjoy,
 10 that's not the right word, but that you could
 11 participate in?
 12 A. Yes, sir.
 13 Q. The reason I ask, Ms. Meza, is this, we're
 14 not talking about somebody you see on the news or you
 15 read about in the paper somewhere else. That's him.
 16 Look at him. That's John Henry Ramirez.
 17 A. Okay.
 18 Q. If you're sitting this jury, there's going to
 19 be a point in time, I guarantee you, because I told
 20 you the very first day I met you, the State is seeking
 21 the death penalty and one day I'm going to stand in
 22 front of you and ask that you evaluate the evidence
 23 and you come out and answer the questions in such a
 24 way that that young man over there is going to be put
 25 to death. And I want you to look in your heart and

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1 tell me if Theresa Meza can do that, if the evidence
 2 is there and the answers to the questions should be
 3 that he receive death penalty? Can you do it, Theresa
 4 Meza?
 5 A. Yes.
 6 Q. No hesitation there.
 7 A. I don't think so.
 8 Q. Okay. Good. Now, I'm not going to tell you
 9 it's an easy thing. I'm not going to tell you it's a
 10 fun thing.
 11 A. No, it's --
 12 Q. I'm not going to tell you --
 13 A. -- it's a very hard one.
 14 Q. -- it's a happy thing. And that's why people
 15 should take it seriously. You can see how serious we
 16 are. I was joking a little bit --
 17 A. Yes.
 18 Q. -- but we're pretty serious about this. But
 19 I just want to know if -- if you can follow through
 20 with what you say. Let me tell you why because you
 21 seem like a woman with strong convictions, but I've
 22 had people before, men and women, that say, "Hey, I
 23 believe in the death penalty, Mark. It's a good --
 24 it's a good law. We should have the death penalty.
 25 And I read about these people that do these bad

1 things. I think they should be executed," and they're
 2 all for the death penalty. And then I say, "Okay.
 3 Come and sit in the jury box and make that decision,"
 4 and they go, "Wait, a minute. Don't make me do it.
 5 Make somebody else do it."
 6 Do you feel that way or do you think you
 7 can actually participate and if called upon make that
 8 decision?
 9 A. I think I could.
 10 Q. Okay. You -- is that because you believe
 11 it's your civic duty, or you believe it's the law, or
 12 --
 13 A. Uh, --
 14 Q. -- you just think you can could be a fair
 15 person and make --
 16 A. A fair --
 17 Q. -- that decision?
 18 A. A fair person and weigh the evidence.
 19 Q. You see where I'm coming from, though, --
 20 A. Yes, sir.
 21 Q. -- because some people, you know, they want
 22 to be fair, but they just have some kind of nagging
 23 thing like, "Oh, well, you know, it's against my
 24 religion or it's against my morals, or -- or, you
 25 know, I just couldn't be in that position," they want

1 somebody else to do that. You don't feel that way, at
 2 all, do you?
 3 A. Oh, no, sir.
 4 Q. So no hesitation about that.
 5 A. No.
 6 Q. Okay. I have to ask it the other way, then,
 7 because remember what the Judge said, just because
 8 you're found guilty of capital murder, do you
 9 automatically get the death sentence? No, there's two
 10 choices, death or life in prison. So if you think the
 11 evidence is such a way that the Defendant should get a
 12 life sentence, can you vote for life sentence, too?
 13 A. Yes, sir.
 14 Q. Instead of a death sentence?
 15 A. Yes.
 16 Q. Looking at -- you looked at the guy a minute
 17 ago, and I noticed -- sometimes people looked at him
 18 for the very first time. Like, for example, that
 19 first day, did you see him the very first day?
 20 A. Yes, sir.
 21 Q. Some people told us they didn't even know he
 22 was the Defendant. They just thought he was a young
 23 guy there, okay? You found out he was the Defendant,
 24 what was -- what did you think about when you first
 25 saw him?

1 A. That he was very young to -- to ruin his
2 life.
3 Q. To be in that kind of situation?
4 A. Situation, yes, sir.
5 Q. Do you think that you would have a hard time
6 making a decision because of his youth?
7 A. I don't think so.
8 Q. Okay. The law in Texas says this, you can't
9 execute somebody under 18.
10 A. Yes, sir.
11 Q. If it's a juvenile, 16, 17, no matter what --
12 how bad the crime they did, you can't execute them.
13 And, obviously, he's not in that -- that category.
14 A. No.
15 Q. I think the evidence is probably going to
16 show he's in his 20s or mid 20s or something like
17 that. So compared to you and me, he seems young, but
18 would you agree with me that people over that majority
19 age of 18 are old enough to know the --
20 A. Yes, sir.
21 Q. -- the law --
22 A. They should know better.
23 Q. -- and they know the difference between right
24 and wrong, right?
25 A. Yes, sir.

1 Q. So would you agree with me that whether
2 they're 25, 35, 45, 55, the law is the same to
3 everybody?
4 A. Yes, sir.
5 Q. I mean, if they're 15, that's another story.
6 But if they're 25, 35, 45, you would agree that they
7 should be old enough or responsible for their actions.
8 A. Yes, sir.
9 Q. So while you might look at youth as being
10 something to consider, that's certainly not something
11 that you're going to say, "Well, I can't make a
12 decision because he's so young."
13 A. No.
14 Q. Okay. The second thing I was going to ask
15 you about is appearances. Sometimes -- have you ever
16 seen people on -- you probably remember Charles
17 Manson, right?
18 A. Yes.
19 Q. You remember how he looked on T.V.?
20 A. Uh-huh.
21 Q. He was a scary-looking dude, right?
22 A. Yes.
23 Q. And some people come in here and they say,
24 "Well, gosh, you know, look at him. He doesn't look
25 like that bad a guy. He looks young. He looks nice."

1 A. Appearances are deceiving.
2 Q. Say again?
3 A. Appearances are deceiving.
4 Q. Can be deceiving. That's exactly right.
5 Would you agree with me that you need to make a
6 decision based on what he did, instead of what he
7 looks like?
8 A. Yes, sir.
9 Q. And, you know, if he's guilty or not
10 shouldn't be decided on, "Oh, poor little -- poor --
11 you know, poor young guy," or something like that, it
12 should make -- be a decision based on the evidence.
13 A. Yes, sir.
14 Q. When you first found that you may be on this
15 jury, that first day when those 2- or 300 people were
16 in there, remember when the Judge came down?
17 A. Yes.
18 Q. And I -- I kind of watched the jury, and the
19 Judge said, "This is a criminal case. This guy could
20 be facing the death penalty." What was your first
21 reaction when you heard it was that kind of case?
22 A. I said, "Wow."
23 Q. Wow. After the initial shock wore off, what
24 did you think?
25 A. I guess it's an interesting case.

1 Q. Okay. Did you have any reservations about
2 being on this case or were --
3 A. No.
4 Q. Let me tell you why, because sometimes I see
5 people, and the Judge says, "You could be facing the
6 death penalty, you may have to make a decision," and
7 then you see people going, "Oh, my gosh, I can't do
8 that," or they -- they kind of freak out, or -- and
9 they say, "Oh, my gosh, I couldn't do that." And then
10 some people, "Well, I better listen a little closer.
11 This is a pretty important case."
12 A. Yes, my reaction.
13 Q. Is that kind of what --
14 A. Yeah.
15 Q. -- your reaction was? And so you listened to
16 what the Judge said the other day, and then today,
17 obviously, you've said that you think you can listen
18 to all the evidence and make a decision, right?
19 A. Yes.
20 Q. And you understand this is -- it's capital
21 murder because it's a murder plus robbery.
22 A. Yes, sir.
23 Q. And it's in the course of committing or
24 attempting to commit robbery. In other words, you
25 know, sometimes people say, "Well, you know, he didn't

1 finish the job." You know, you robbed a bank and you
2 got caught. The guy can't say, "Well, just because I
3 got caught, that means I'm not guilty," right?

4 A. Yes, sir.

5 Q. It just -- it means, in the course of
6 committing or attempting to commit robbery. So that
7 happens at the same time.

8 Also, there's two parts of the trial.
9 The first part is did he do it or not.

10 A. Yes.

11 Q. And only if you decide he did it, then you go
12 to the second part and what punishment he has.

13 A. Yes, sir.

14 Q. In the second part of the trial, you might
15 get to hear additional evidence. In the first part of
16 the trial, generally speaking, you hear what happened
17 that day and the surrounding circumstances of the
18 crime. But in order to decide what kind of punishment
19 he should get, like death or life, you might get to
20 hear additional evidence. You might get to hear his
21 background, like does he have a criminal history, does
22 he doesn't have a criminal history; has he been a good
23 boy all his life or has he been in trouble with the
24 law before; has he been an Eagle Scout, you know, and
25 made good grades in school, or has he always been in

1 future. It doesn't say is it a certainty, do you know
2 for sure that he's going to do these things, the
3 question -- the question just says is it probable that
4 he's going to do it, --

5 A. Yes.

6 Q. -- more likely than not. Then it also says
7 would he commit criminal acts of violence? Sometimes
8 people say, "Well, I can only give the death penalty
9 if I think he's going to repeat the crime and do
10 another murder." But the law doesn't say that. The
11 law says any criminal acts of violence. It doesn't
12 necessarily have to be, you know, killing somebody.

13 And then the last part says, "constitute
14 a continuing threat to society." You probably heard
15 that phrase before.

16 A. Yes.

17 Q. Sometimes people come up to me and they say,
18 "Well, Mark, you know, why do you have to seek the
19 death penalty? Why don't you-all just put him in
20 prison for the rest of his life -- for life, and that
21 way he won't hurt anybody, he'll be locked up." And I
22 always say, "Wait a minute, who else is in a prison?"
23 Tell me. Huh?

24 A. Other criminals.

25 Q. Other prisoners.

1 trouble? You see what I'm saying?

2 A. Yes, sir.

3 Q. That helps you make up your mind. And -- and
4 we call it his background, so you can make an obvious
5 -- I'm sorry, a better informed decision.

6 A. On what to give him.

7 Q. Say -- on what to give him, exactly. And
8 when you go back on in the jury -- in the jury room,
9 if you found him guilty, you don't just go back there
10 and say, "Okay, how many vote for death and how many
11 vote for life," and check it off, you don't do that.
12 You answer two questions, as the Judge has showed you.

13 A. Yeah.

14 Q. And let's look over them real quick. It
15 says, "Special Issue No. 1," it's the one down at the
16 bottom, it says, "Is there a probability that the
17 Defendant would commit criminal acts of violence that
18 will constitute a continuing threat to society?"

19 A. And you answer yes or no.

20 Q. You answer yes or no. Do you have a crystal
21 ball?

22 A. No, sir.

23 Q. You know how to predict the future?

24 A. No, sir.

25 Q. The law doesn't require me to predict the

1 A. Yeah.

2 Q. People that work in the prison, like the
3 guards.

4 A. Yeah.

5 Q. The warden, you know, his staff, probably
6 clerical people, maintenance people. In other words,
7 just because you put him in prison --

8 A. Doesn't mean anything.

9 Q. -- doesn't mean that he can never be around
10 people to hurt them. You see what I'm saying?

11 A. Yes, sir.

12 Q. We don't put them out on a desert island
13 where they'll never see another human being. The
14 question is, prison is -- the answer is prison is
15 still part of society. You've got some of your rights
16 removed, but you're still having interaction with
17 other people, which is society even though on a
18 limited sense. Would you agree with that?

19 A. Yes, sir.

20 Q. So just because he's in prison doesn't mean
21 he can't hurt anybody else, right?

22 A. That's true.

23 Q. Have you ever heard of that happening, where
24 people are in prison, they hurt other guards or
25 prisoners?

1 A. Yes, sir.

2 Q. That's not unusual, is it?

3 A. No.

4 Q. So that's what that question basically says,

5 "Is there a chance, a good chance, that he's going to

6 hurt somebody else in the future?" That's why we call

7 it "the future dangerousness question."

8 A. Okay.

9 Q. And like you said, you answer it yes or no.

10 Then you go to the second question. The

11 second question is a little more involved, and we call

12 it the mitigating question -- "mitigating

13 circumstances question." Mitigating is a big word

14 that really means anything that would lessen or make

15 less severe the punishment. That's what mitigating

16 circumstance is, anything that would lessen or make

17 less severe the punishment or anything that would

18 reduce a Defendant's moral blameworthiness.

19 A. Okay.

20 Q. Well, what does that mean? Well, think of it

21 kind of as the opposite of aggravating circumstances,

22 or maybe think of it like extenuating circumstances.

23 He did the crime, but is there any reason that we

24 should lower it to warrant that a life prison -- in

25 prison, rather than death sentence be imposed.

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1 Here's an example. Say you have two

2 burglars. You're on a jury and there's two different

3 burglars. You hear the evidence and -- and burglars

4 are bad, right? They break into somebody's house and

5 they steal something, and you don't like burglars, so

6 you say, "Well, these are pretty bad. I'm going to

7 give them both high sentences," but then you hear the

8 evidence.

9 And in the first case this is the

10 circumstances of the burglary. The guy went in and

11 kicked in the door, broke down the door, went into the

12 house, stole all the money, this -- the jewelry, the

13 stereo, the T.V., the V.C.R.s, took all the things of

14 value from the house. Not only that, he ripped the

15 house apart. He ransacked it, broke things, knocked

16 things over, tore things up. And then you hear about

17 his background and you find out this isn't his first

18 burglary. He's done five other burglaries before in

19 the past, okay?

20 A. Okay.

21 Q. So the second burglar comes along. You're

22 trying another case and here's the second burglar.

23 He's still guilty of burglary because he broke into

24 somebody's house and stole something, but then you

25 find out the circumstances may be a little different.

1 In the second case, he didn't kick in the door or

2 break a window to get in. The door -- the back door

3 was unlocked so he went in without breaking in. And

4 what did he do? He didn't steal the jewelry, the

5 money, the T.V., the V.C. (sic), stereos. He went in

6 the kitchen and stole a loaf of bread and some food to

7 feed his family. His kids were hungry because he had

8 lost his job. Didn't steal all the other stuff, he

9 just stole food. And you find out has this guy got

10 five prior burglaries? No, he's never been in trouble

11 with the law before.

12 Would you -- would you -- now, you're on

13 the jury and you have to punish both these guys.

14 Would you punish them the same?

15 A. No.

16 Q. Why not?

17 A. Because they're different crimes.

18 Q. And there's different crimes and there's

19 different circumstances. In the first case we had

20 aggravating circumstances. It would go higher.

21 A. Yes.

22 Q. In the second case you had mitigating

23 circumstances. You'd probably go lower. I mean, all

24 he did was steal some food. He's never been in

25 trouble for. That's what this question's about,

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1 Ms. Meza.

2 A. Okay.

3 Q. The Judge is saying, okay, he's guilty of

4 capital murder, you think he's a continuing threat to

5 society, so the jury, it looks like they're heading

6 toward the death penalty, right, --

7 A. Right.

8 Q. -- because he's a future danger to society

9 and he's guilty capital murder. But before you vote

10 that way, you have to take into consideration all the

11 evidence, the big picture, --

12 A. Uh-huh.

13 Q. -- what happened that day, the circumstances

14 of that offense, his Defendant's -- the Defendant's

15 character and background, --

16 A. Uh-huh.

17 Q. -- you know, does he have good character, bad

18 character, good background, bad background; and his

19 personal moral culpability, is there sufficient

20 mitigating circumstance or circumstances to warrant

21 that a sentence of life, rather than death sentence be

22 imposed? It's kind of a -- remember the old thing we

23 learned in government, checks and balances?

24 A. Yes, sir.

25 Q. It's kind of a check to say okay, you're not

1 going to automatically going to give the death
2 penalty. He may have some evidence or circumstances
3 that says that you should lower the sentence, but
4 here's what the key is: It has to be enough. It has
5 to be sufficient. It has to -- you have to kind of do
6 a balancing test. Like with those two burglars, --

7 A. Yeah.

8 Q. -- if you didn't know all the circumstances,
9 you wouldn't know how to treat them, right?

10 A. That's right.

11 Q. But -- and this case is the same way. That's
12 what that question does. What is a mitigating
13 circumstance is up to the jury. The Judge doesn't
14 come in and give you a list, "Okay, these are
15 mitigating circumstances." Some of the things we kind
16 of talked about were like, he was a straight A student
17 in school, he was a decorated war veteran, he always
18 helped his mother, you know, do the dishes, whatever
19 it could be.

20 Does that mean that it automatically
21 lowers the sentence to life?

22 A. No, sir.

23 Q. No. What it means is, is it enough to
24 outweigh all this other stuff?

25 A. (Nods head.)

1 Q. See what I'm saying?

2 A. Yes, uh-huh.

3 Q. You know, like the -- like the two burglars,
4 you know, it's -- you couldn't treat those guys the
5 same, right?

6 A. No.

7 Q. It wouldn't be fair. And the thing in here
8 is, just because you hear a mitigating circumstance,
9 do you automatically knock down the sentence to life?

10 A. No.

11 Q. No, it's got to be enough of a mitigating
12 circumstance to show that he deserves life instead of
13 death. But these 12 folks on the jury make that
14 decision. I can't tell you what a mitigating
15 circumstance is, the Judge can't. You have to decide.

16 A. Okay.

17 Q. In other words, some people may say, "Well,
18 you know, we ought to give him a break, you know. He
19 was a war hero and got a medal years ago. Or he did
20 very good and made straight A's in school, so we
21 should give him a break." Other people may say, "Hey,
22 I don't care if he made straight A's in school. He's
23 still got to pay for this crime, --"

24 A. That's right.

25 Q. "-- you know, he's got to do this." But the

1 -- but the Judge says you have to keep an open mind
2 and listen to all this evidence. What weight you give
3 it to is up to the jury.

4 A. Okay.

5 Q. So you're not going to close your mind.

6 You're going to listen to any evidence that --

7 A. Yeah.

8 Q. -- could possibly lower --

9 A. I'll listen to all the evidence before I make

10 --

11 Q. Right.

12 A. -- up my mind.

13 Q. Right. And that's the key, you just don't
14 want to automatically give him the death penalty.
15 That's not fair. You need to check yourself and say,
16 "Hey, is there any reason we should go lower, instead
17 of death?"

18 One thing the Judge might tell you, too,
19 is this law that says, "Voluntary intoxication is not
20 a defense to crime." In other words, if you commit a
21 crime while you're drunk or on drugs, does that mean
22 you're excused?

23 A. No.

24 Q. No, it doesn't. That's what the law says.

25 The Judge may also tell you, though, that's a possible

1 mitigating circumstance, you know? Say a guy robbed a
2 bank and he was drunk. Some jurors may say, "You
3 know, he's not a real bank robber. He was just drunk
4 when he did that, so we ought to give him a break."
5 Other jurors may say, "I don't care if he was drunk or
6 not. You don't rob banks." See what I'm saying?

7 A. Uh-huh.

8 Q. It's a possible mitigating circumstance. You
9 know, things like his age, maybe because he's young is
10 a possible mitigating circumstance; maybe because he
11 was intoxicated, it's a possible mitigating
12 circumstance; maybe because he came from a broken
13 home, it's as possible mitigating circumstance. But
14 it's up to the jury to decide is it enough to outweigh
15 everything else? Follow me?

16 A. Yes.

17 Q. Does that kind of make sense the way it
18 works?

19 A. Yes, sir.

20 Q. Because it's -- it's pretty careful and you
21 can't just rush into things.

22 A. No.

23 Q. You have to find him guilty beyond a
24 reasonable doubt, then you have to say he's a
25 continuing threat to society, and before you give the

1 death penalty, you take one big overview of
2 everything, say, "Hey, is there any reason we should
3 lower that sentence, is there any kind of extenuating
4 circumstances or mitigating circumstances?"

5 Okay. If you answer the first question
6 yes, and the second question no, that Defendant is
7 sentenced to die. If he's -- if you answer it any
8 other way he gets a life sentence. You think you can
9 participate in that scheme and make a vote after you
10 hear all the evidence?

11 A. Yes, sir.

12 Q. Okay. Thank you, Ms. Meza.

13 THE COURT: All right. Mr. --

14 MR. SKURKA: Judge, let me look at the
15 questionnaire and see if I have just any other
16 questions.

17 THE COURT: Okay.

18 Q. (BY MR. SKURKA) You said that your church has
19 one position against -- is against the death penalty,
20 but you disagree with that, correct?

21 A. Yes.

22 Q. Tell us why.

23 A. I feel a person that's committed something
24 that's like murder should be punished.

25 Q. Uh-huh. Well, that's fine. And, you know,

1 sometimes, you know, like Catholics, sometimes --
2 Catholic Church is against the death penalty.

3 A. Yeah.

4 Q. But, on the other hand, I get Catholics here
5 that come up and say, "Look, I believe in the Church's
6 teachings. But as far as the death penalty, I make my
7 own decisions."

8 A. That's my --

9 Q. Is that how you --

10 A. Yes.

11 Q. -- kind of how you fit? I don't want to put
12 words in your mouth, but that's kind of how it's done?

13 A. Yeah.

14 Q. You understand that policemen are to be
15 treated just like anybody else. Sometimes people say,
16 "Well, just because he's a cop, I have to believe
17 everything he says."

18 A. No.

19 Q. The law says cops are treated just like
20 everybody else on the stand. Can you do that?

21 A. Yes.

22 Q. One of the questions on -- on -- remember
23 that part about where there's a whole bunch of things
24 that said, "I agree with this, I disagree with this,"
25 remember that on the questionnaire?

1 A. I think so.

2 Q. You don't remember it? It's okay. It was a
3 long questionnaire, right?

4 A. Yeah.

5 Q. One of the ones, let me just go over it, it
6 says, like, "The death penalty is absolutely never
7 justified," and you put, "I disagree with it." Then
8 you put, "I do not believe in the death penalty under
9 any circumstances", yet, you put "agree" with that.

10 A. Did I put that? I probably meant -- I was
11 tired by then.

12 Q. Okay. So do you believe the death penalty --

13 A. Yes.

14 Q. -- is appropriate --

15 A. Yes.

16 Q. -- in certain circumstances.

17 A. Yes, sir.

18 Q. Not in every case.

19 A. Not in every case, but in some.

20 Q. Not in every capital murder case. It's just
21 if the evidence is, then these questions should be
22 answered, correct?

23 A. Yes, sir.

24 Q. And you know that. The Judge already told
25 you.

1 A. Yes, sir.

2 Q. The death penalty could be an answer in a
3 capital murder case, but it could also be life. It
4 just depends on what the evidence says.

5 A. Yes, sir.

6 Q. Are you open-minded to consider all those
7 things?

8 A. Yes.

9 Q. So you're not looking at him and saying,
10 "Well, I already think he's guilty and I'm going to
11 --"

12 A. No.

13 Q. "-- vote for the death penalty?" That was
14 the next thing I was going to tell you. As he sits
15 there, now, he's presumed to be innocent.

16 A. Yes.

17 Q. Remember, we -- the Judge said you start at
18 innocence. You don't start at guilty and then work
19 your way to innocence. The State has to prove the
20 case beyond a reasonable doubt in this case and every
21 other case. So, can you consider him to be innocent
22 at this point?

23 A. Yes.

24 Q. And he should be because if you had to vote
25 right now, you would have to vote innocent because he

1 starts that way.
 2 A. Yes.
 3 Q. Now, does that mean he's always going to be
 4 innocent?
 5 A. No.
 6 Q. That's a presumption of innocence. I haven't
 7 put on any case, so he's presumed innocent at this
 8 point. And you can -- you believe that, right?
 9 A. Yes.
 10 Q. He can testify if he wants to. If he doesn't
 11 want to he doesn't have to.
 12 A. That's true.
 13 Q. And if he doesn't testify, I'm sure this
 14 Judge is going to tell you in the written instructions
 15 you can't hold that against him. You won't hold that
 16 against him, will you?
 17 A. No.
 18 Q. You'll be able to follow the law?
 19 A. Yes.
 20 Q. And the burden of proof in this case is
 21 beyond a reasonable doubt. Doesn't mean beyond all
 22 doubt or any doubt or shadow of a doubt. I have to
 23 prove the case beyond a reasonable doubt; --
 24 A. Yes, sir.
 25 Q. -- is that right?

1 A. Yes.
 2 Q. There's no way I can prove it to you a
 3 hundred percent, --
 4 A. No.
 5 Q. -- right, unless you, you know, were there
 6 yourself and you saw it, that might be a way to do it.
 7 And the law doesn't require me to, it just says,
 8 "Beyond a reasonable doubt."
 9 Do you have any questions of me about any
 10 of these things we've talked about?
 11 A. No.
 12 Q. Do you think you want to be on this jury?
 13 A. I think so.
 14 Q. You think you could be a good juror?
 15 A. I think so.
 16 Q. You're not leaning one way or the other at
 17 this point.
 18 A. No.
 19 Q. You're going to be straight down the road,
 20 and the only thing you should be leaning toward now is
 21 he's presumed innocent.
 22 A. Yes.
 23 Q. Because there hasn't been any other evidence.
 24 But you could listen to all the evidence and make a
 25 decision and follow through on that decision?

1 A. Yes, sir.
 2 Q. That's all I can ask you to do, Ms. Meza.
 3 Thanks so much for talking to me.
 4 A. You're welcome.
 5 MR. SKURKA: Don't leave, yet.
 6 VENIREPERSON NO. 35: Okay.
 7 MR. SKURKA: They may want to ask you
 8 some questions.
 9 MR. JONES: I go?
 10 THE COURT: Yeah.
 11 VOIR DIRE EXAMINATION
 12 BY MR. JONES:
 13 Q. Ms. Meza, Mr. Skurka, in talking about the
 14 standard of proof beyond a reasonable doubt, --
 15 A. Yes, sir.
 16 Q. -- he used the metaphor of 100 percent. He
 17 said he didn't have to prove his case a hundred
 18 percent? I dislike the use of that metaphor to
 19 describe a degree of certainty. You said -- he said,
 20 "I don't have to prove my case 100 percent."
 21 If -- if we did use that measure, what
 22 percent would you require before you would find
 23 somebody guilty?
 24 A. I guess it depends on the evidence.
 25 Q. In other words, if he proved his case by 95

1 percent?
 2 MR. SKURKA: Judge, I'm going to object
 3 to him going into percentages. That's not the law.
 4 The standard is beyond a reasonable doubt.
 5 THE COURT: Well, --
 6 VENIREPERSON NO. 35: I don't think I can
 7 give a percentage.
 8 Q. (BY MR. JONES) Well, I know, I'm just saying,
 9 if you find yourself in this jury, I don't -- I ask
 10 you, please, not to use percentages.
 11 A. Oh, I wasn't.
 12 Q. Okay. It's not -- it's not a fair way to
 13 describe or define reasonable doubt. Reasonable doubt
 14 is a -- is a degree of certainty which only you can
 15 know when you reach it, okay?
 16 A. Yes, sir.
 17 Q. You worked for the Army Depot for over 33
 18 years?
 19 A. Yes, sir.
 20 Q. And when did you retire?
 21 A. June 3rd of 2006.
 22 Q. '06. And the questionnaire says you were a
 23 computer operator out there?
 24 A. Yes, sir.
 25 Q. And can you tell us -- can you tell me a

1 little bit more specifically what -- what you did?
 2 A. I worked with a main frame, computers, H.P.s,
 3 many computers when I retired.
 4 Q. All right.
 5 A. And other jobs as required.
 6 Q. Okay. So your -- your computer activity
 7 supported the -- the job?
 8 A. Yes, sir.
 9 Q. The rebuilding of the aircraft that was going
 10 on?
 11 A. No, sir. I did -- mostly, it was for
 12 production.
 13 Q. Production?
 14 A. Yes, sir.
 15 Q. Okay. I think I know sort of what that
 16 means. But, anyway, it's a big, involved process, --
 17 A. Yes, sir.
 18 Q. -- right? And they use computers to help
 19 keep up with things.
 20 A. Yes.
 21 Q. And have you always lived in Corpus Christi?
 22 A. Yes, sir.
 23 Q. Okay. So you're -- are you a native? I
 24 mean, you were --
 25 A. I was born and raised here.

1 Q. Born and raised here. Okay. And you have
 2 family here still?
 3 A. Just cousins.
 4 Q. Okay. Now, on page 26 of your questionnaire,
 5 Question 117 says, "How strongly do you believe in the
 6 death penalty," and they gave you a scale and from one
 7 to ten, ten being the strongest, and you circled ten,
 8 which tells me that you strongly agree with --
 9 A. Yes.
 10 Q. -- the death penalty as a form of punishment.
 11 A. Yeah. It depends on how bad the crime was.
 12 Q. I understand that, but the -- the death
 13 penalty is a type of punishment as approved by our
 14 legislature.
 15 A. Yes, sir, I know that.
 16 Q. And you agree with that.
 17 A. Yes.
 18 Q. Do you believe that our Texas society
 19 benefits from having the death penalty as a punishment
 20 option in some cases?
 21 A. (No response.)
 22 Q. Do we -- do we benefit by having the death
 23 penalty?
 24 A. I think so.
 25 Q. Can you please tell me why you think we

1 benefit -- how do we benefit? What benefit do we
 2 derive from?
 3 A. I'm not sure if I can put it into words. I'm
 4 not very good at...
 5 Q. Well, do your best.
 6 A. I'm -- I figure that maybe people --
 7 Q. I beg your pardon?
 8 A. I'm not sure how to explain it, sir.
 9 Q. Well, keep in mind that this is the kind of
 10 question that you're not normally asked. You know,
 11 it's not like --
 12 A. I know.
 13 Q. -- something that you're thinking about every
 14 day, and this may be the first time coming in today
 15 that you --
 16 A. I really thought --
 17 Q. -- processed --
 18 A. -- thought about, yes.
 19 Q. -- really thought about. And so you -- you,
 20 obviously, have some strong feelings here.
 21 A. I do.
 22 Q. I noticed --
 23 A. I believe that a person that's done a crime
 24 --
 25 Q. Okay.

1 A. -- like murder should be punished.
 2 Q. Okay. So, is --
 3 A. And if he -- and if he's going to do it,
 4 again, he should really be punished.
 5 Q. Okay. So, if I ask the question, "Do you
 6 think our society benefits from having this form of
 7 punishment," you -- you don't know whether it benefits
 8 or not.
 9 A. I don't.
 10 Q. But you do agree that -- that it's -- it
 11 should be a form of punishment for the individual
 12 involved, if it's called for, is that what you're
 13 saying?
 14 A. Yes, sir.
 15 Q. Okay. Now, the -- have you -- I think you
 16 put here that you -- you read the newspaper, right?
 17 A. Yes, sir.
 18 Q. You keep up with current events? Over the
 19 past few years there's been stories in the newspaper
 20 and on television and some -- now magazines. I think
 21 The Texas Monthly had a lead article on this subject --
 22 of people who have been convicted of crimes and
 23 sentenced to prison only to be released later when it
 24 was found that they were factually innocent because
 25 the DNA testing showed that they were innocent.

1 Have you read those stories?
 2 A. Yes, sir.
 3 Q. And you read about some guy that's been in
 4 prison, say, for 20 years and they're letting him out,
 5 you know? When you read a story like that, how does
 6 it make you feel?
 7 A. Well, like they don't have the advances in --
 8 that we -- that we have now then back then.
 9 Q. But how do you feel about the person
 10 involved?
 11 A. That he spent a lot of time he shouldn't have
 12 spent in prison.
 13 Q. Uh-huh. Now -- and when you read a case like
 14 this, it's obviously -- it's obvious that some mistake
 15 was made, right?
 16 A. Yes, sir.
 17 Q. And they get some -- sometimes there's more
 18 than one --
 19 A. Yeah.
 20 Q. -- factor involved. Would you agree that we
 21 as human beings are not perfect?
 22 A. That's true.
 23 Q. And we try to do -- like when you were --
 24 the job that you had at the Army Depot, you probably
 25 --

1 some point, if the person is executed, you run out of
 2 time.
 3 A. That's true.
 4 Q. In other words, if it's discovered after
 5 you've been executed that there was a mistake, you'd
 6 have to live with the fact that you may have executed
 7 an innocent person.
 8 A. Yes.
 9 Q. Okay. Now, if you accept that, and we have
 10 to accept it because we --
 11 A. Yeah.
 12 Q. -- know it's true, I mean, we've got many
 13 examples of it, do you think having the death penalty
 14 is worth from time to time executing an innocent
 15 person?
 16 A. If that person is guilty, yes, sir.
 17 Q. No, I don't think --
 18 A. Oh.
 19 Q. You think just having the death penalty as a
 20 form of punishment, do you think it's worth having
 21 that option if it means that from time to time we
 22 might, you know, have to execute an innocent person?
 23 A. I'm not sure about that question, sir. I
 24 don't know how to answer it.
 25 Q. It's a difficult question.

1 A. I did the best I could.
 2 Q. -- you did the best you could to make things
 3 work the way they were supposed to, right?
 4 A. Yes.
 5 Q. Now, in the -- in our -- in our work here,
 6 the legal -- the criminal law field, particularly, our
 7 laws set up an elaborate appeal procedure in a case --
 8 in cases like this. And the purpose of the appeal
 9 procedure is to correct errors, if they occur.
 10 A. Yes, sir.
 11 Q. I mean, we don't -- we don't like for -- in
 12 other words, if the Constitution is violated in the
 13 course of the criminal trial, or some mistake is made
 14 that makes the proceeding unfair, we don't want to --
 15 we want to come back and do it right.
 16 A. Yes, sir.
 17 Q. Okay? And -- now, with these guys, like up
 18 in Dallas, who were spent, you know, 15 or 20 years in
 19 jail before the mistake was discovered, --
 20 A. Yes, sir.
 21 Q. -- they were alive, were they not?
 22 A. Yes, sir.
 23 Q. In other words, they -- they could still --
 24 had some life left where they could be out and be
 25 free. The problem with the death penalty is that at

1 A. Yes, it is.
 2 Q. Okay. Do you have any opinion right now
 3 about whether the Defendant is guilty or innocent?
 4 A. No, sir, because I haven't heard the
 5 evidence.
 6 Q. You haven't heard the evidence. Let me -- on
 7 the -- do you -- Mr. Skurka explained how the -- how
 8 the -- the death penalty -- how the penalties of death
 9 or life are imposed in a criminal -- in a capital
 10 case.
 11 A. Yes, sir.
 12 Q. Did you hear him explain that?
 13 A. Yes, sir.
 14 Q. You tell me in your own words, how does --
 15 how does a defendant get -- what has to happen before
 16 a defendant gets the death penalty in a case like
 17 this, what -- what has to be found?
 18 A. The evidence that he's found guilty.
 19 Q. He has to be found guilty of the crime of
 20 capital murder.
 21 A. Yes.
 22 Q. Okay. What -- what are the other two things
 23 that have to happen?
 24 A. That there's a sufficient evidence to -- or a
 25 probability that he's going to harm somebody else.

1 Q. Okay. All right. So that would be Special
2 Issue No. 1.
3 A. Okay.
4 Q. Okay?
5 A. I guess that he's going to threaten somebody
6 else.
7 Q. Okay. That's Special Issue --
8 A. Okay.
9 Q. -- No. 1. Uh-huh.
10 A. Depends on his character.
11 Q. Uh-huh.
12 A. If he's done it before.
13 Q. Okay. And then Question No. 2, do you see it
14 there?
15 A. Yes, sir.
16 Q. Are there any words in that -- in that
17 question that you do not understand?
18 A. No, sir.
19 Q. What does personal moral culpability mean?
20 A. His character.
21 Q. Well, now, his character is in the line
22 above, "The --"
23 A. Okay.
24 Q. "-- Defendant's character and background --"
25 A. His --

1 that are in Special Issue No. 2. She could not give
2 me a definition of personal moral culpability, nor
3 could she articulate in her own words the meaning of
4 mitigating circumstance, so those are two extremely
5 important concepts.
6 THE COURT: Well, I mean, but --
7 MR. JONES: Even -- even after the
8 district attorney spent some time -- and I think the
9 minimum qualification of a juror in a capital murder
10 case that will decide the life or death of another
11 human being, the juror should at least be able to --
12 to tell us in their own words what those -- those
13 words in the Charge mean, as the lay -- as our Juror
14 No. 1 did, the very first juror that we selected.
15 She was able to articulate and to
16 convince us that she knew exactly what those words
17 meant, but this lady was having difficulty -- I like
18 this lady, and she's a hard -- obviously a
19 hard-working person if you work for the Army Depot for
20 33 years, you've got to have something going for you,
21 and -- but she -- I don't think she grasped what is
22 required of her at the second stage of the trial. So
23 we -- as demonstrated by the totality of her answers
24 to our questions here.
25 MR. SKURKA: Our response, simply, Judge,

1 Q. -- and it says, "-- and his personal moral
2 culpability."
3 A. I can't say it. Not his character, but the
4 way he presents himself? I'm not saying it right.
5 I'm not good with words, sir. I'm not sure how to
6 answer that one.
7 Q. Okay. On -- then down in the last section of
8 that question it says in -- "is there sufficient
9 mitigating circumstances" or a circumstance or a
10 circum- -- what is a mitigating circumstance?
11 A. There's enough evidence or that he won't
12 commit the crime again.
13 MR. JONES: Okay. I don't have any
14 further questions.
15 THE COURT: All right. Anything else?
16 MR. SKURKA: No, Your Honor.
17 THE COURT: All right, why don't you wait
18 in the jury room for just a second, Ms. Meza, and
19 we'll be right with you.
20 VENIREPERSON NO. 35: Okay.
21 (Venireperson exits courtroom.)
22 THE COURT: All right.
23 MR. SKURKA: We'll accept this juror.
24 MR. JONES: We challenge for cause.
25 The ground is that she does not understand the words

1 is there is no definition of personal moral
2 culpability. The law doesn't decide -- doesn't define
3 that, the Judge doesn't define that. That is designed
4 (Sic) by the jurors themselves. For her to have a
5 different explanation or something that doesn't quite
6 fit Mr. Jones' definition does not disqualify her as a
7 juror.
8 The second part is the mitigating
9 circumstance stuff. When I went through it with the
10 lady several times about mitigating circumstance, I
11 think you went through her -- with her, too, I think
12 Mr. Jones was just, unfortunately, confusing her. I
13 think she understands the concept and verbalized that
14 to the Court.
15 We'd ask the Court to deny their
16 challenge for cause.
17 MR. JONES: Well, I -- Your Honor, I -- I
18 didn't try to confuse her. I just asked her the
19 question.
20 THE COURT: Yeah, but you asked her
21 questions kind of in a tough way. I mean, you know,
22 if you're not a lawyer and you're not used to this
23 process, that question is -- you know, I mean,
24 "Personal moral culpability."
25 MR. GARZA: Well, but, Your Honor, this

1 is a capital murder case. We want to know that jurors
2 know and understand --

3 THE COURT: I fully --

4 MR. GARZA: -- these concepts, Judge?

5 THE COURT: I full understand that.

6 Let's get her back in here and explain some more about
7 it to her. I'm not saying that, I mean, we're not
8 going to explain this to her, but, I mean, -- I mean,
9 you --

10 MR. GARZA: But she's not going to
11 understand them and that's part of the problem.

12 THE COURT: We don't know if she's not
13 going to understand them. If she doesn't understand
14 them now --

15 MR. GARZA: And we're entitled to a juror
16 that is going to understand these concepts.

17 THE COURT: I agree.

18 MR. GARZA: And give them effect like
19 they should under the law.

20 THE COURT: I agree.

21 MR. GARZA: And I don't think she can do
22 that, Judge.

23 THE COURT: Well, I -- I disagree. She
24 may or may not. Let's bring her back.

25 MR. GARZA: Well, then are you going to

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1 give us a ruling, already, or --

2 THE COURT: No, I'm not going to give you
3 a ruling already. I'm not saying I'm not going to
4 sustain your challenge at some point.

5 MR. GARZA: Okay.

6 THE COURT: I just -- I just -- to cut
7 her off at that point, I just don't agree.

8 MR. JONES: Well, then, if -- if the
9 meaning of, like, the phrase "personal moral
10 culpability" is the issue, here, I would ask that the
11 Court formulate a definition that -- and have the
12 Court give her the definition and -- rather than us go
13 back and forth.

14 THE COURT: Well, I can -- let me -- let
15 me try and explain this question to her and see she
16 understands it, okay?

17 MR. JONES: Okay. I would like to have
18 that definition --

19 THE COURT: Okay.

20 MR. JONES: -- on -- on both of them, the
21 meaning of mitigating circumstance --

22 THE COURT: Well, I'm going to talk to
23 her about what all this -- what this question entails.
24 I think she got the first part, I think you agree, the
25 Special Issue 1.

1 MR. JONES: Yeah, I think she's got that
2 part. The problem that I have with -- with the -- you
3 know, we -- we question these jurors, and in
4 particular the State, the State talks for five minutes
5 and asks a yes or no -- a question, you know, asks
6 leading questions. But at some point we have to ask
7 the person, what does that mean? You tell us what it
8 means. Let them communicate with us.

9 THE COURT: Well, let's --

10 MR. JONES: I don't think she's
11 communicating --

12 THE COURT: -- let's talk --

13 MR. JONES: -- to me, at least, that
14 she's able to do that.

15 THE COURT: Well, let's -- let's get her
16 in here and see if she does.

17 (Venireperson enters courtroom.)

18 VOIR DIRE EXAMINATION

19 BY THE COURT:

20 Q. All right, Ms. Meza, --

21 A. Uh-huh.

22 Q. -- let's -- let's talk about -- you can sit
23 down. Let's talk about Special Issue No. 2, okay?

24 A. Okay.

25 Q. All right. "After taking into

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1 consideration all of the evidence."

2 A. Uh-huh.

3 Q. Okay? That means everything that's presented
4 to you at this trial, whether it's at the guilt or
5 innocence phase or the second half.

6 A. Okay.

7 Q. Everything.

8 A. Yeah.

9 Q. Okay? "The circumstances of the offense,"
10 what's that? That's -- that's --

11 A. What he was found guilty or innocent.

12 Q. The first part of the case.

13 A. Uh-huh. Yeah.

14 Q. All right. "And the personal -- and the
15 Defendant's character and background," and what's
16 that?

17 A. His -- whatever he's done before, his home.

18 Q. All right. Maybe the way he grew up?

19 A. The way he grew up.

20 Q. Okay. Maybe it can be -- I don't know, you
21 got anything else?

22 A. How he did in school, if he went to school.

23 Q. What kind of a guy he is?

24 A. Yes, sir.

25 Q. You know, maybe people come in and say, "You

1 know what, he's a great guy. He's a great guy. You
2 know, I can vouch for him. He is of great moral
3 character, you know? I think he's a good guy. He --
4 you know, he used to mentor me as a child." Maybe he
5 did community service. I don't know, okay?

6 A. Okay.

7 Q. Maybe -- maybe some people come in here and
8 say, "Bad. Bad guy."

9 A. Okay.

10 Q. "He's got a bad criminal history. Bad guy."

11 A. Uh-huh.

12 Q. Okay?

13 A. Yes, sir.

14 Q. "And the personal moral culpability of the
15 Defendant."

16 A. His attitude, I guess?

17 Q. Okay.

18 A. And how he treats people or...

19 Q. But "culpability," you know what that means?
20 That means --

21 MR. JONES: Objection, Your Honor, I
22 respectfully ask the Court to ask her what it means,
23 and not to tell her what it means.

24 THE COURT: Well, okay. I'll -- okay,
25 I'll consider your objection.

1 Q. (BY THE COURT) Do you know what that means?

2 A. Uh...

3 Q. "Culpability."

4 A. Not really, sir.

5 Q. Okay. Culpability is blame.

6 A. Blame?

7 Q. Okay. And the -- it's basically what you're
8 guilty -- you're guilty of.

9 A. His guilt. Okay.

10 Q. "Personal moral --" you know what moral is?

11 A. Yeah.

12 Q. Blame. Basically, personal moral guilt --

13 A. Okay.

14 Q. -- of the Defendant, okay? Now, if you
15 consider all of this stuff, what we're asking you to
16 do is this, you take in -- you look at the crime, --

17 A. Uh-huh.

18 Q. -- okay? You hear -- you're going to hear
19 the facts about it.

20 A. Okay.

21 Q. You look about his background. You know,
22 maybe you hear he was a great guy and this -- this
23 particular crime was way out of his character.

24 A. Okay.

25 Q. Other than this day, and it was -- may have

1 been awful, but other than this day he's been a great
2 guy.

3 A. Okay.

4 Q. Okay? He's always helped us. He's always
5 been good to the community. He's been good to his
6 mother. He -- you know, he tutors kids on -- on, you
7 know, English.

8 A. Whatever.

9 Q. Whatever.

10 A. Uh-huh.

11 Q. Okay?

12 A. Yeah.

13 Q. The idea is, you're supposed to consider
14 everything about him.

15 A. Yeah.

16 Q. Not just what happened that day, everything.

17 A. Everything in his life.

18 Q. Everything in his life that's presented to
19 you. Now, obviously, you can't consider anything that
20 isn't presented to you in this courtroom, but you --
21 you got to -- what we don't want is this, we don't
22 want people that will say, "You know what, he did the
23 crime, and, therefore, he gets the death penalty. I'm
24 not going to consider anything."

25 A. No. I wouldn't do that.

1 Q. If that's you, you need to tell us.

2 A. No, I wouldn't do that.

3 Q. Okay? If that's you, you need to tell us.
4 But, if you would consider all of his background in
5 determining --

6 A. Whether he gets life --

7 Q. -- whether he should --

8 A. -- or death.

9 Q. Then we need to know that.

10 A. Okay.

11 Q. Which is -- which is it?

12 A. I would consider the -- I can consider both
13 of them, depending on his background, his moral
14 character.

15 Q. Okay. Because earlier you said if he did the
16 crime, you know, then he -- well, I mean...

17 A. If he -- we found him guilty, then he needs
18 to pay for it. But, I don't know --

19 Q. He gets -- okay, go ahead.

20 A. -- I have to listen to the evidence to decide
21 whether it would be life in prison or death.

22 THE COURT: Okay. Mr. Jones, you can
23 continue to ask questions.

24 MR. JONES: I don't -- I don't have any
25 other questions.

1 THE COURT: Do you have anything else?
 2 MR. SKURKA: No, Your Honor.
 3 THE COURT: All right. Why don't you
 4 wait in the --
 5 VENIREPERSON NO. 35: Okay.
 6 THE COURT: -- jury room.
 7 (Venireperson exits courtroom.)
 8 MR. JONES: Okay. With all due respect
 9 to the Court's attempt there and the lady's attempt to
 10 answer the questions, she still does, in my opinion,
 11 and this is the basis of my challenge for cause, is
 12 she does not grasp the meaning of personal moral
 13 culpability. The question -- the jury instruction
 14 says that she should consider that. So when she's
 15 considering that, personal moral culpability of the
 16 Defendant, what is she considering?
 17 THE COURT: What do you consider personal
 18 moral culpability of the Defendant?
 19 MR. JONES: It's -- I've -- I've thought
 20 many, many times about it. What it -- what it asks
 21 the juror to do is to consider to what extent the
 22 Defendant's conduct deviates or adheres to the moral
 23 standards of the community. Is it a severe deviation
 24 or a slight deviation or a middle deviation? Because
 25 moral -- moral suggests a standard of conduct, okay.

1 Every society has a standard of conduct,
 2 good and bad, okay, and -- and all of us, like,
 3 "Character," when you say a person has good character,
 4 you're saying he adheres to the commonly accepted
 5 standards of good conduct, like some thrift or
 6 whatever, you know?
 7 Now, if you're personally -- moral
 8 culpability, the word, "moral" suggests that there's a
 9 standard out there of conduct that's generally
 10 accepted by the community. And, you know, it's -- it
 11 has basis in our Judeo-Christian, you know, moral
 12 system. And that -- that question -- and I -- it was
 13 picked -- it was drawn out of a Supreme Court case
 14 written by, you know, lawyers; that they should have
 15 framed it a different way. I'd -- and it's my -- my
 16 --
 17 THE COURT: It's your assertion that she
 18 doesn't understand the -- the question.
 19 MR. JONES: That she doesn't understand
 20 the question. I think the question -- you know, it
 21 took me hours. One day I sat sat down in one of my
 22 criminal cases, and what does this really mean? And
 23 the best I could come up with is it asked the juror to
 24 consider when the Defendant engaged in the conduct, if
 25 they found him guilty, and if he -- if she finds he

1 committed a robbery and a murder, at the time that he
 2 engaged in that conduct to what degree did he deviate
 3 from society's -- or deviate or adhere to society's
 4 moral standards? Was it a great deviation or was he
 5 motivated by some other motive, you know, like -- like
 6 fear or -- or self-defense or whatever --
 7 THE COURT: Okay.
 8 MR. JONES: But -- but --
 9 THE COURT: I -- well, I respectfully
 10 disagree with you, Mr. Jones.
 11 MR. JONES: Okay. Are we --
 12 THE COURT: So --
 13 MR. JONES: -- are we --
 14 THE COURT: -- I will overrule your
 15 objection.
 16 MR. JONES: We will then exercise our
 17 fifth peremptory challenge --
 18 THE COURT: Okay.
 19 MR. JONES: -- on Ms. Meza.
 20 THE COURT: Bring her in.
 21 MR. GARZA: Based on the Court's ruling.
 22 MR. JONES: Based on the Court's ruling.
 23 THE COURT: That's fine. I got you.
 24 (Venireperson enters courtroom.)
 25 THE COURT: All right, Ms. Meza, --

1 VENIREPERSON NO. 35: Yes, sir.
 2 THE COURT: -- you are not going to be on
 3 this jury, but we do appreciate your service. Thank
 4 you very much.
 5 VENIREPERSON NO. 35: You're welcome.
 6 (Venireperson exits courtroom.)
 7 THE COURT: All right. We'll see you-all
 8 tomorrow. I guess you-all want to get here at 8:15
 9 tomorrow?
 10 MR. SKURKA: Do we have a schedule or
 11 anything for tomorrow?
 12 THE COURT: Let's --
 13 MR. SKURKA: She's pointing to you.
 14 THE COURT: Oh, yeah, it's probably here
 15 someplace. Yeah, a bunch.
 16 MR. GARZA: Tomorrow and Friday? Well,
 17 can we have a copy of it?
 18 (Evening recess.)

1 THE STATE OF TEXAS)


2 COUNTY OF NUECES)

3 I, Mary Lopez Buitron, Official Court Reporter
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14 I further certify that the total cost for the
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17 WITNESS MY OFFICIAL HAND this the 7th day of
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